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# **TRANSCRIPT OF RECORD.**

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**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1918**

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**No. 168**

**THE UNITED STATES, APPELLANT,**

**THE PURCELL ENVELOPE COMPANY.**

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**APPEAL FROM THE COURT OF CLAIMS.**

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**FILED APRIL 4, 1919.**

**(35889)**

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 467.

THE UNITED STATES, APPELLANT,

vs.

THE PURCELL ENVELOPE COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

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1 Court of Claims.

THE PURCELL ENVELOPE COMPANY,	}	No. 22855.
VS.		
THE UNITED STATES.		

I. *Petition and amended petitions.*

The claimant filed its original petition in this court on April 23, 1902.

Subsequently, to wit, on March 26, 1906, by leave of court, the claimant filed an amended petition.

On June 5, 1911, by leave of court, filed an amendment to the amended petition, so that it now reads as follows:

2 In the Court of Claims.

THE PURCELL ENVELOPE COMPANY, CLAIMANT.

*v.*

THE UNITED STATES.

*To the honorable the Court of Claims:*

The above-named claimant, the Purcell Envelope Company, respectfully shows to this honorable court:

First. That it now is, and at all of the times hereinafter mentioned was, a corporation, duly created, organized and existing under and by virtue of the laws of the State of New York, and having its place of business at Holyoke, in the State of Massachusetts, and presents this its petition and claim in its own right as such corporation.

Second. That heretofore and on or about the 20th day of April, 1898, your petitioner, being duly authorized and empowered by law so to do, made and entered into an express contract, agreement, and undertaking with the United States of America, acting by and through the honorable James A. Gary, then Postmaster General of the United States, and who was duly authorized and empowered by law to make and enter into said contract, agreement, and undertaking. And whereby your petitioner undertook, covenanted, and agreed to and with the United States of America, acting as aforesaid for the consideration hereinafter mentioned, to furnish and deliver, promptly as ordered, and subject to the approval of the Postmaster General, all the stamped envelopes and newspaper wrappers that it might be called upon by the Post Office Department to furnish during the four years beginning on the first day of October, 1898, of the denominations, sizes, qualities, and descriptions and at and for the price and compensation stated in the following list, to wit:



Post office designation.	Description of envelopes and wrappers.	Quality.	Color.	Size (inches).	Proposal No. 1, price per thousand for envelopes made of paper according to dept's formula.
1	Note size, gummed	First	White only	2½ by 5½	\$0.65
2	Full letter size, gummed	Second	White or amber	3½ by 5½	.73
3	Commercial size, gummed	First	"	3½ by 5½	.60
3	Commercial size, gummed	Second	"	"	.75
4	Trade size, gummed	First	"	3½ by 5½	.60
5	Extra letter size, gummed	Second	"	3½ by 5½	.85
5	Extra letter size, gummed	Second	"	3½ by 6½	.78
6	Extra letter size—ungummed (for enclosing circulars)		Plain manila	"	.70
7	Official size—gummed	First	White or amber	3½ by 8½	.55
7	Official size—gummed	Second	"	"	1.50
8	Large official size—gummed	First	"	4½ by 9½	1.15
9	Extra large official size—gummed	"	"	4½ by 10½	1.80
10	Small baronial size—gummed	"	White only	3¾ by 4½	1.95
11	Large baronial size—gummed	"	"	4½ by 5½	.80
12	Newspaper wrappers, gummed	"	Plain manila	5½ by 10½	.90
13	Legal size, gummed	First	White or amber	3½ by 6½	.45
13	Legal size, gummed	Second	"	"	.88
14	Extra legal size, gummed	First	"	3½ by 6½	.78
14	Extra legal size, gummed	Second	"	"	.92
					.82

5 And otherwise in accordance with certain printed and written specifications, made part of the said contract. And that the United States, acting by and through the Postmaster-General, contracted and agreed to pay your petitioner the price and compensation for the manufacturing and furnishing of the said stamped envelopes and newspaper wrappers stated in the list aforesaid, and set opposite the numbers, qualities, and sizes aforesaid, respectively. Payment therefor to be made monthly, after a proper examination and inspection of account for the same. All of which more fully and at large appears by reference to said contract and specifications, now in the possession and under the control of the Post Office Department, at the city of Washington, D. C. Your petitioner has not in its possession or under its control, and can not obtain the said contract, or any copy or duplicate thereof to file with this petition.

Your petitioner, therefore, begs leave to refer to said contract and specifications so in the possession and control of the department as a part hereof. And your petitioner therefore also further respectfully asks that this honorable court may require the said Post Office Department to produce and file with this honorable court herein a true and correct copy of each of the following papers, all of which are in the possession of said department, and none of which is in the possession or under the control of your petitioner, to wit (1), the advertisement and invitation of the said the Honorable James A. Gary, as such Postmaster General, for sealed proposals for furnishing said stamped envelopes, and newspaper wrappers, for the term of four

years, beginning on the first day of October, 1898, and dated on or about the 28th day of February, 1898; (2) the sealed proposal of your petitioner to furnish said envelopes and wrappers, in response and answer to said advertisement and invitation, and submitted by your petitioner to Post Office Department on or about the 30th day of March, 1898, together with a copy of the bond of your petitioner accompanying the same; (3) the order of the Postmaster General, to wit, No. 149, dated on or about the 20th day of April, 1898, awarding to your petitioner the contract to furnish said stamped envelopes and newspaper wrappers for the term aforesaid; (4) the letter, notice, and request of said department by the Hon. John A. Merritt, then third Postmaster General to your petitioner, that said contract had been awarded to it, and requesting the execution of a formal written and printed contract therefor, and the delivery of the same in quadruplicate to said department, dated on or about the 21st day of April, 1898; (5) the formal contract and bond of your petitioner accompanying the same, whereby your petitioner undertook and agreed to furnish the said envelopes and wrappers as aforesaid, and transmitted or delivered by your petitioner to said department, pursuant to said notice and request therefor, and dated on or about the — day of April, 1898; and (6) a copy of any and all other papers, letters, orders, documents, and records, made or caused to be made by the United States, the said Post Office Department or your petitioner, and being in the possession and control of said department, its officers, agents, or employees, and in any way pertaining to the contract aforesaid.

Third. That your petitioner, in view of obtaining said contract, and in and about the preparation for the performance of the same, necessarily and unavoidably paid, laid out, and expended large sums of money and devoted a great deal of time and labor in and about procuring and building at Holyoke, in the State of Massachusetts, a suitable building of such construction as to afford security against fire and theft, and with apartments separate and distinct from others in which any other work is to be done, and with offices, rooms, and apartments for the manufacturing, storing, registering, and packing said envelopes and wrappers. And in and about the purchase and procuring of a large amount of necessary and expensive machinery, appliances, facilities, and apparatus, made especially for and adapted to that purpose and with which to provide and equip said building, and in the necessary preparation, on the part of your petitioner, to fully and promptly perform said contract, according to the terms, stipulations, and conditions thereof.

And to provide also against any and all contingencies that are likely to occur during the existence of said contract. And necessary, also, to promptly furnish and deliver, complete in all respects, in such quantities of stamped envelopes and newspaper wrappers as might be required to fill all orders of said Post Office Department. And which said building and machinery were and are constructed and made for and especially adapted to that purpose, the making of

said envelopes and wrappers, and to no other purpose. Your petitioner further avers and charges that it then and thereby became and was fully and thoroughly prepared and equipped with all of the necessary buildings, rooms, offices, apartments, machinery, apparatus, appliances, and means by and with which to fully and completely execute and perform said contract. And that your petitioner was then and at all times thereafter has been fully prepared, able, willing, and anxious to keep and perform said contract, and all and singular its several covenants, stipulations, conditions, and provisions, and to make, furnish, and deliver all of the stamped envelopes and newspaper wrappers in and by the said contract to be made, furnished, and delivered within the time and in the manner therein specified, and to otherwise do, keep, and perform all the covenants, agreements, stipulations, and conditions in said contract contained, and to be kept and performed by your petitioner on its part. And in the performance of which said contract your petitioner could have utilized and employed its said buildings and machinery in the

8 making and delivery of said envelopes and wrappers, and could have thereby made, realized, and received a fair and reasonable compensation and profit for such use and employment. Your petitioner further shows, upon information and belief, and charges the fact so to be, that if it had been permitted and allowed to keep and perform said contract, and to make and deliver said envelopes and wrappers, it could and would have thereby made, realized, and received, at the price aforesaid, a fair and reasonable compensation, profit, and gain per thousand therefor over and above the cost and expense of making and delivering the same. And that your petitioner was deprived of said compensation, profit, and gain by the United States as hereinafter stated.

That said contract was awarded to your petitioner as to the number of envelopes and wrappers to be called for by said department and furnished by your petitioner, on the basis of the issue in round numbers of corresponding sizes and qualities for the year ending December 31, 1897, as follows, to wit:

No. 1, 1st quality.....	481,000
No. 2, 1st quality.....	9,868,000
No. 2, 2d quality.....	876,000
No. 3, 1st quality.....	62,882,000
No. 3, 2d quality.....	6,791,000
No. 4, 1st quality.....	6,396,000
No. 5, 1st quality.....	355,957,000
No. 5, 2d quality.....	13,566,000
No. 6, un gummed.....	18,636,000
No. 7, 1st quality.....	6,467,000
No. 7, 2d quality.....	1,147,000
No. 8, 1st quality.....	5,068,000
No. 9, 1st quality.....	3,295,000
No. 10, 1st quality.....	1,932,000
No. 11, 1st quality.....	2,850,000

No. 12, newspaper wrapper-----	40,747,000
No. 13, 1st quality-----	50,742,000
No. 13, 2d quality-----	3,373,000
No. 14, 1st quality-----	7,784,000
No. 14, 2d quality (estimated)-----	2,000,000

9 And your petitioner avers, on information and belief, that a much larger number than that taken as the basis of this contract as aforesaid, but as to which your petitioner can not be more definite and certain, have been and were called for by said department and furnished as hereinafter stated, and all of which your petitioner, but for the premises hereinafter stated, could and would have made and furnished said department and at and for the compensation, profit, and gain per thousand aforesaid.

Fourth. Nevertheless, your petitioner avers and charges that the United States, acting by and through the Postmaster General, the Hon. Charles Emory Smith, the immediate successor as such of the said the Hon. James A. Gary, well knowing the premises, and without any just, legal, or reasonable cause whatsoever therefor, wholly neglected, failed, and refused to keep and perform said contract on their part, but broke the same in this: that they wholly failed, neglected, and refused to call for any envelopes or wrappers from your petitioner. And also, without any such cause, refused to allow or permit your petitioner at any time to keep or perform said contract on its part, or to furnish or deliver to said department any stamped envelopes or newspaper wrappers, or to make, realize, obtain, or receive any compensation, profit, or gain whatsoever therefor. And also neglected, failed, and refused to pay your petitioner the price and compensation aforesaid, or any part thereof, to be paid it for the furnishing of said envelopes and wrappers; or to pay or in any manner reimburse your petitioner to the amount of anything whatever on account of its outlay and expenditure of the time, money, and labor aforesaid. And on or about the 22d day of July, 1898, the United States, acting as aforesaid and without any just, legal, or reasonable cause whatsoever, and in violation of said contract, made, as your petitioner is informed and believes, and

10 entered of record in the said Post Office Department, a certain writing or order of the tenor and to the effect following; that is to say:

OFFICE OF THE POSTMASTER GENERAL,

*Washington, D. C., July 22, 1898.*

Order No. 301.

Be it ordered.

That so much of the Postmaster General's order No. 149, bearing date April 20, 1898, as awarded to the Purcell Envelope Company, of Holyoke, Massachusetts, the contract for furnishing stamped envelopes to the Post Office Department, based upon the bid of said company submitted March 30, 1898, in response to the advertisement of the Postmaster General of February 28, 1898, be, and the same is

hereby, revoked and canceled and declared to be null and void, and that all letters and notices from any officer of the Post Office Department addressed to said company advising it of said award be, and the same are hereby, recalled and annulled.

(Signed)

CH. EMORY SMITH,

*Postmaster General.*

And further, that the United States, acting as aforesaid, and wholly disregarding their said contract with your petitioner, and the rights of your petitioner in that behalf, thereafter—to wit, on or about the                      day of                      , 1898—entered into some contract, agreement or arrangement with some other corporation or association, at the city of Hartford, in the State of Connecticut, to furnish said envelopes and wrappers to the said Post Office Department during and for the time aforesaid, more definite particulars as to which your petitioner can not now state. And that said corporation or association has ever since furnished and delivered said envelopes and wrappers on orders of the Post Office Department  
11      therefor. That during all the time aforesaid your petitioner had not and could not make any use whatever of said building and machinery, and the same has lain and remained there entirely idle and useless, and from which your petitioner has not and could not derive any benefit or profit whatever. And by reason of the premises your petitioner was also deprived of and wholly lost the fair and reasonable compensation, profits and gain aforesaid which it could and otherwise would have realized, made and received, to the great damage of your petitioner in the sum of, to wit, \$675,000, and the same or any part hereof has not been paid.

Five.—Your petitioner further avers and charges that no action has been taken on its said claim in Congress or in any of the departments of the United States. That your petitioner, and it alone, is the true and only owner of said claim. That no assignment or transfer of said claim, or any part thereof or interest therein, has been made. That your petitioner, this claimant, is justly entitled to the amount herein claimed—to wit, the said sum of \$675,000—from the United States, after allowing all just credits and offsets. That your petitioner, the Purcell Envelope Company, created, organized and existing as aforesaid, is composed and consists of the following-named persons, officers, and stockholders, and of none other—to wit, Henry E. Townsend, Esq., residing at New York City; James Purcell, Esq., residing at Valatie, State of New York, and Henry O'Brien, Esq., and the Hon. Louis F. Payn, both residing at Chatham, in said State, and that they and each of them has at all times borne true allegiance to the Government of the United States; that they are citizens of the United States; and that they have not nor has any or either of them in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

Your petitioner verily believes the facts stated in the amended petition to be true.

12       Wherefore your petitioner demands judgment against the United States for the said sum of six hundred and seventy-five thousand dollars (\$675,000).

THE PURCELL ENVELOPE COMPANY,

*Claimant.*

By HENRY E. TOWNSEND, *Vice-President.*

FRANK S. BLACK,

*Attorney for Claimant.*

STATE OF MASSACHUSETTS,

*County of Hampshire, ss:*

Before me, the undersigned, personally appeared Henry E. Townsend, vice-president of the Purcell Envelope Company, who being by me duly sworn, on oath says that he has read the foregoing amended petition, by him subscribed as vice-president of the Purcell Envelope Company, and knows the contents thereof; that the matters and things therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

HENRY E. TOWNSEND.

Subscribed and sworn to before me this 29th day of May, 1911.

EDWIN HENRY HOWE,

*Notary Public.*

Post office address of claimant, The Purcell Envelope Company, is Box 169, New York City, N. Y.

Post office address of attorney for claimant, Frank S. Black, is 111 Broadway, New York City, N. Y.

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*Claimant's Exhibit "A."*

This contract, made this 22d day of April, 1898, and executed in quadruplicate, between the United States of America, acting by the Postmaster General, of the first part, and the Purcell Envelope Company (a corporation duly created and organized under and by virtue of the laws of the State of New York, but doing business at Holyoke, Massachusetts), by James Purcell, its president, as principal, and the Fidelity and Deposit Company of Maryland as surety, of the second part, witnesseth:

Whereas the Postmaster General, in compliance with law, caused an advertisement, bearing date the 28th day of February, 1898, to be published in certain newspapers in the United States, inviting proposals for furnishing, in accordance with specifications prepared by his directions, all the stamped envelopes and newspaper wrappers that the department might call for during the four years beginning on the 1st of October, 1898, a printed copy of which advertisement and specifications is hereto annexed and made part hereof, as follows:

## PROPOSALS FOR FURNISHING STAMPED ENVELOPES AND NEWSPAPER WRAPPERS.

[Advertisement.]

POST OFFICE DEPARTMENT,  
*Washington, D. C., February 28, 1898.*

Sealed proposals are invited and will be received at this department until 12 m. on Wednesday, the 30th of March, 1898, for furnishing stamped envelopes and newspaper wrappers in such quantities as may be called for by the department during a period of four years, beginning on the first day of October, 1898. Proposals must be made on the blank forms provided by the department, securely enveloped and sealed, indorsed "Proposals for furnishing stamped envelopes and newspaper wrappers," and addressed to the Third Assistant Postmaster General, Washington, D. C. Bids delivered in person must be handed in at or before the hour above specified for the receipt thereof; otherwise they will not be considered.

Blank forms of proposal, with full specifications and samples of the envelopes and wrappers, will be furnished upon application to the Third Assistant Postmaster General.

JAMES A. GARY,  
*Postmaster General.*15 *Specifications—Furnishing stamped envelopes and newspaper wrappers.*

## CHARACTER OF BIDS.

Bids are invited first, for furnishing all the envelopes herein called for of paper to be made according to the department's standards as described below, samples of which will be furnished to bidders, constituting Proposal No. 1; and, second, for the same envelopes but of paper to be submitted by bidders and made after their own formulas. This will constitute Proposal No. 2. Under this proposal as many different kinds of paper as a bidder may choose to submit will be received and considered; but of each kind at least ten sheets must accompany the bid, and the formulas from which the papers are produced—that is to say, their constituents, proportions, and the exact process of manufacture—must be disclosed. After a careful consideration of all the bids, the Postmaster General will determine whether to award the contract on the department sample or upon some sample to be submitted.

## SIZES AND DESIGNATIONS.

The following are the different sizes and qualities of stamped envelopes and newspaper wrappers above referred to:

No. 1. Note size, 2½ by 5½ inches; 1st quality, white only.



No. 2. Full letter size,  $3\frac{1}{4}$  by  $5\frac{1}{2}$  inches; 1st quality, white and amber; 2d quality, white and amber.

No. 3. Commercial size,  $3\frac{3}{8}$  by  $5\frac{1}{4}$  inches; 1st quality, white and amber; 2d quality, white and amber.

No. 4. Trade size,  $3\frac{5}{8}$  by  $5\frac{1}{4}$  inches; 1st quality, white and amber.

No. 5. Extra letter size,  $3\frac{1}{2}$  by  $6\frac{5}{16}$  inches; 1st quality, white and amber; 2d quality, white and amber.

No. 6. Extra letter size,  $3\frac{1}{2}$  by  $6\frac{5}{16}$  inches; ungummed, for inclosing circulars, plain manila.

No. 7. Official size,  $3\frac{1}{8}$  by  $8\frac{1}{8}$  inches; 1st quality, white and amber; 2d quality, white and amber.

No. 8. Large official size,  $4\frac{1}{4}$  by  $9\frac{1}{2}$  inches; 1st quality, white and amber.

No. 9. Extra large official size,  $4\frac{3}{8}$  by  $10\frac{1}{8}$  inches; 1st quality, white and amber.

No. 10. Small baronial size,  $3\frac{9}{16}$  by  $4\frac{1}{2}$  inches; 1st quality, white only.

No. 11. Large baronial size,  $4\frac{1}{4}$  by  $5\frac{1}{4}$  inches; 1st quality, white only.

No. 12. Newspaper wrappers,  $5\frac{1}{2}$  by  $10\frac{1}{2}$  inches; plain manila.

No. 13. Legal size,  $3\frac{3}{4}$  by  $6\frac{3}{4}$  inches; 1st quality, white and amber; 2d quality, white and amber.

No. 14. Extra legal size,  $3\frac{3}{4}$  by  $6\frac{5}{8}$  inches; 1st quality, white and amber; 2d quality, white and amber.

#### COMPOSITION AND QUALITY OF PAPER.

The paper from which the first quality of envelopes, numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, and 14, are to be manufactured must be made specially for the purpose, of the best grades of white linen and of white domestic cotton rags, in the proportion of 35 per cent of 16 linen and 65 per cent of cotton, excluding all other materials except the necessary chemicals, and it must weigh not less than 50 pounds a ream of 500 sheets, measuring  $22\frac{1}{2}$  by 30 inches, or in that proportion. It must be sized by being run through a tub of animal sizing, and must be loft-dried, or dried by some process of air drying which, in the judgment of the Postmaster General, will produce equally good results.

The paper from which the second quality of envelopes, 2, 3, 5, 7, 13, and 14, are to be manufactured must be made specially for the purpose, of 75 per cent of what are known as "No. 2 country rags," composed of about one-half soiled whites and one-half blues (except that other rags of an equivalent character and quality may be used instead after having been approved, in writing, by the Postmaster General), and 25 per cent of bleached sulphite pulp, excluding all other material except the necessary chemicals, and it must weigh not less than 40 pounds a ream of 500 sheets, measuring  $22\frac{1}{2}$  by 30 inches, or in that proportion. It must be sized by being run through a tub of animal sizing.



The paper of both the above qualities must be made on a Fourdrinier machine.

The paper from which the newspaper wrappers, No. 12, are to be manufactured must be composed of 95 per cent of jute butts and 5 per cent of South Carolina clay, excluding all other material except the necessary coloring matter, and must weigh  $34\frac{1}{2}$  pounds a ream of 500 sheets, measuring  $22\frac{1}{2}$  by 30 inches, or in that proportion. In the process of manufacture the jute butts must be washed six hours in the washing engines and beaten ten hours in the beating engines, and the stock passed through a Jordan engine, and the paper must be rosinized in the engine and made on a Fourdrinier machine.

The paper from which the ungummed envelopes, No. 6 (for inclosing circulars), are to be manufactured must be composed of the same materials, in the same proportions, and subject to the same conditions as the paper for the newspaper wrappers, No. 12, except that it must weigh not less than  $29\frac{1}{2}$  pounds a ream of 500 sheets, measuring  $22\frac{1}{2}$  by 30 inches, or in that proportion.

All the paper must be clean and free from imperfections, run and calendered to a uniform weight and thickness, and that for the first quality envelopes and No. 6 envelopes and newspaper wrappers must be the same in color, quality, material, tensile strength, and all other respects as the samples furnished to bidders, and to be made a part of the contract.

The colors of the second quality paper must be the same as those of the first quality, and its tensile strength must be as great as that of the present second quality papers, samples of which, merely to show the strength of the paper, are also furnished to bidders.

The paper must also be watermarked with such design as may be approved by the Postmaster General. The right is reserved by the Postmaster General to change the color of any or all of the papers at any time during the existence of the contract; but in making such changes no more expensive colors shall be selected than those in the contract samples. All papers furnished or used shall be subject to the supervision and approval of the Postmaster General or his authorized agent before and after being manufactured into envelopes and wrappers.

17 The Postmaster General shall have the right to cause inspection to be made, when, in such manner, and as often as he may desire it, of the process of manufacturing the paper in all its several stages, and of stationing an agent, for the purpose of inspection at the mill or mills where the paper is made, in which latter case the contractor will be required to furnish such agent with a properly furnished room in the mill without charge, and give him every needed facility for carrying out his duty.

Watermarked paper that may be spoiled in the process of manufacture, or condemned as unfit for use, shall not be used or sold by the contractor in its manufactured state, but shall be reduced to pulp or otherwise destroyed, under such regulations as the Postmaster General may prescribe. Such spoiled and rejected paper shall not be made

over for stamped envelopes or wrappers, nor shall clippings and shavings of any kind be used for this purpose.

The watermark designs in the dandy-rolls shall be destroyed, under the supervision of the Postmaster General or his authorized agent, when no longer required for use.

The Postmaster General reserves the right to increase or diminish, at any time during the contract term, the standard weights of any of the different qualities of paper, upon condition that he shall pay a proportionate increase or decrease of price, to be determined upon the actual cost to the contractor of the paper in use at the time of the change.

#### STYLE OF MANUFACTURE—PRINTING—EMBOSSING.

All the envelopes and wrappers must be embossed with postage stamps of such denominations, designs, and colors and the Postmaster General may require—the embossing to be done in the highest style of the art, and all the impressions to be clear, distinct, and perfect. They must also bear such printing as the Postmaster General may direct, of any desired style of type, the execution of which shall be clear and distinct, without smear or set-off, and otherwise free from imperfections.

The ink used for embossing and printing shall be of such colors and quality as may from time to time be approved by the Postmaster General, the right, however, being reserved to him to change these colors at pleasure.

The envelopes must be made in the most workmanlike manner after the styles and of the cuts shown by the samples furnished to bidders; the cut, however, of envelope 8 to be the same as those of envelopes 7 and 9, and the cut of envelope 11 to be like that of envelope 10; the joints must be well and securely fastened with the best quality of adhesive gum, and the gumming on the flap (except for circulars) must be not less than half an inch in width for the length shown by the samples. The wrappers must be gummed not less than three-quarters of an inch in width across the end.

The envelopes and wrappers shall be subject in all respects to the approval of the Postmaster General or his duly authorized agent, and his right of rejection shall be absolute.

All envelopes and wrappers spoiled in process of manufacture or rejected shall be destroyed by the agent of the department, in the presence of the contractor or his representative, or otherwise disposed of as the Postmaster General may direct. Payment will not be made for envelopes or wrappers thus spoiled or rejected.

Should the use of any of the above sizes or qualities be discontinued during the contract term, the contractor shall not be entitled to any compensation for damages resulting therefrom.

Should the contractor, in the performance of work under the contract, make unauthorized use of any machinery or material, or other

thing on which a patent has been granted by the United States, the Government is to be made free of all liability for such infringement.

#### DESIGNS AND DIES.

The original dies and hubs now in use for embossing stamped envelopes, being the property of the Government, will be turned over to the contractor as soon after the execution and approval of the contract as he may require them; and from such dies and hubs he must produce the necessary working dies with which to provide a sufficient supply of stamped envelopes and wrappers of the several kinds and denominations to make deliveries promptly as called for from the beginning of the contract term. The Postmaster General may, however, adopt new designs for use from the beginning of the contract term, in which event the contractor shall prepare in time the necessary hubs and dies, both original and working. The working dies from which stamped envelopes and wrappers are now being embossed will be turned over to the new contractor as soon as their use can be dispensed with by the present contractors, either before or after the beginning of the new contract term, if it be found necessary.

The contractor will be further required, at his own expense, to keep in repair and to renew when necessary, or when it shall be directed by the Postmaster General, all dies from which stamped envelopes and wrappers are embossed; and should additional denominations be required at any time, they shall be prepared and furnished in a reasonable time at the expense of the contractor, and subject to the approval of the Postmaster General. All the work connected with the preparation, renewal, and repair of the dies and plates shall be done under the immediate supervision of the contractor and of the Government agent, by such parties as may be approved by the Postmaster General, and in accordance with such regulations as he may prescribe. The right is also reserved by the Postmaster General to change the designs at pleasure. No dies, either original or working, shall be made, procured, or used without the approval of the Postmaster General or his duly authorized agent. The contractor shall not manufacture or permit to be manufactured by any person in his employ any dies for producing stamped envelopes, except such as may be required for use in carrying out the contract; and he shall be liable in damages for any unauthorized manufacture of such dies, and for the production of stamped envelopes therefrom. He shall be responsible for the safekeeping of the dies while in his use or custody. When not in use the dies shall be safely stored and kept in such manner and under such regulations as the Postmaster General may prescribe. All dies or hubs made or used at any time in filling the contract shall be the property of the United States, and, together with those that may be turned over to the contractor, shall be delivered in good working order to the Postmaster General or his authorized agent whenever demanded. Worn out or discontinued dies may be required to be cancelled or destroyed, at the discretion of the Postmaster General, under such regulations as he may prescribe.

The contractor shall faithfully account to the Post Office Department for all stamped envelopes and wrappers printed or produced from regularly authorized dies and paper, and shall be liable in damages for the theft or misappropriation of any stamped envelopes and wrappers that may be manufactured by him or come into his custody as contractor.

BUILDING—PLACE OF MANUFACTURE.

The envelopes and wrappers must be manufactured in a strictly first-class building of such construction as to afford reasonable security against loss by fire or theft, and in apartments separate and distinct from those in which any other work is done, and when finished and awaiting issue they shall be stored in a fireproof vault or room, on or immediately connected with the premises, and especially fitted up for the purpose; the said building, apartments, or vault to be subject to the approval of the Postmaster General or his authorized agent. Special provision must also be made by the contractor for the safe-keeping on the premises of envelopes and wrappers while in course of preparation under such regulations as may be prescribed by the Postmaster General or his authorized agent, and subject to his approval. The building must at all hours of the day and night be policed or guarded in such manner as the Postmaster General shall require.

The bidder will be required to designate in his proposal the building in which he proposes to manufacture the envelopes and wrappers, and the quantity of space to be devoted to the purpose; or if he designs to erect a building, that fact must be stated in the proposal.

AGENT—OFFICE ROOMS—INSPECTION.

A resident agent and inspector of the department will have supervision of the manufacture, storage, and issue of the envelopes and wrappers, and he shall at all times have full and free access to the building, apartments, and vault where the envelopes and wrappers are manufactured and stored for the purpose of inspecting them. The contractor shall furnish this agent and his clerks suitable and properly furnished office rooms (including janitor's service), connected with the premises on which the envelopes and wrappers are manufactured, stored, and issued for the transaction of the business of the agency, without cost to the Government. The contractor may also be required to furnish, without charge, suitable and properly furnished office rooms for registering and otherwise preparing packages of envelopes and wrappers to be forwarded through the mails. The apartments and rooms for manufacturing, storing, and registering envelopes and wrappers shall be connected with one another by communicating doors, all of which shall be constructed and fitted up to the satisfaction of the Postmaster General or his authorized agent.

The Postmaster General shall have the right to cause special inspection to be made at any time by any agent or agents whom he may designate for the purpose of the building, rooms, and apartments used for the manufacture and storage of envelopes and wrappers and of those in course of manufacture or in stock.

20 The contractor, his employees, and agents, shall conform to such regulations as the department may from time to time adopt for the security of the Government, which regulations may comprehend, if deemed expedient, the consignment by the contractor to the department's agent of all paper to be used in the manufacture of envelopes, the count and issue of it by him to the contractor's employees as it shall be needed for printing, and a strict accountability for the paper so issued and its product.

#### STOCK ON HAND.

The contractor shall at all times keep on hand a stock of the several kinds and denominations of finished envelopes and wrappers sufficient to promptly meet all orders of the department, and to provide against any and all contingencies that may be likely to occur during the existence of the contract—such stock to be always equal to an average ten-days' supply of ordinary envelopes of the several denominations and sizes (not including special-request envelopes); and said envelopes and wrappers shall be held subject to the control of the Postmaster General or his authorized agent or agents. And the Postmaster General shall have the right to require the contractor, at any time during the existence of the contract, to provide an extra quantity of envelopes and wrappers, not exceeding a supply for six months.

The Postmaster General reserves the right to impose a fine upon the contractor, in such sum as he may deem proper, to be deducted in the settlement of accounts, for the failure to have on hand at any time a sufficient supply of envelopes and wrappers with which to promptly meet all requisitions of the department.

In the event that the exigencies of the public service shall require the acceptance by the department of any envelopes or wrappers which, in the opinion of the Postmaster General or of his authorized agent, do not fulfill the requirements of the contract, the right is reserved to the Postmaster General to pay for such inferior envelopes and wrappers anything less than the regular price fixed by the contract that may seem to him just under all the circumstances, which payment shall be a complete discharge of all liability on the part of the Government for such envelopes and wrappers.

On failure of the contractor to promptly furnish any envelopes or wrappers that may be called for under the contract, the Postmaster General reserves the right to purchase them in the open market; and if a greater price be paid than that prescribed by the contract for like articles, the difference shall be charged to the contractor. Failure to furnish any envelopes or wrappers within a

reasonable time after they shall have been ordered may be regarded by the Postmaster General as a sufficient cause for annulling the contract.

The Postmaster General also reserves the right to impose a fine or fines upon the contractor for errors made, whereby either a greater or a less number of envelopes and wrappers are issued to postmasters than are called for on the orders of the department.

#### PACKING—BLANKS.

The envelopes and wrappers must be banded in parcels of 25 and packed in strong pasteboard or straw boxes (not inferior to No. 50  
21      unlined western straw board), securely bound on the corners and edges with cotton cloth and of such quality, weight, and construction as shall be approved by the Postmaster General or his authorized agent; each box to contain not more than 500 and not less than 250 each of envelopes 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, and 14, and not more than 500 and not less than 100 of envelopes 7, 8, and 9. Every box shall bear a label specifying the number, size, quality, and denomination of its contents. When less than 4,000 envelopes or wrappers are required to fill the order of a postmaster, the boxes containing them shall be put up in suitable packages, or in one package, securely wrapped with strong manila paper, and sealed so as to safely bear transportation by mail. When 4,000 or more are required, the pasteboard or straw boxes containing them must be packed in strong wooden cases, well strapped with hoop-iron or wire, each case to contain such number of envelopes, not exceeding 25,000, as the Postmaster General may from time to time direct. Said cases shall be addressed by the contractor, under the direction of the agent of the department. Labels of direction, to be furnished and addressed by the agent, shall be affixed to the sealed packages by the contractor. All blanks that may be necessary in sending out envelopes shall also be furnished and filled out by the agent.

#### DELIVERY.

The contractor must be ready to commence the delivery of the envelopes and wrappers on the 1st day of October, 1898, when the contract term begins; and thereafter they must be promptly furnished and delivered, complete in all respects, in such quantities as may be required to fill the orders of the department. Delivery may be required at the post office or at the agency at the place of manufacture, or at the nearest adjacent large post office with adequate facilities for handling and mailing, or into freight cars should the department at any time decide to ship cards by that means, or into a railway post office, in the discretion of the Postmaster General.

#### STOCK ON HAND AT EXPIRATION OF CONTRACT.

The department will, after satisfactory inspection, accept and pay for, at the regular contract prices, the stock of stamped envelopes and

wrappers that may remain on hand at the close of the contract term; and the contractor may be required to issue them subject to the conditions of the contract, but provided that such stock shall not exceed in quantity the average requirements of the department for a period of fifteen days. Any surplus over that quantity may be destroyed, at the discretion of the Postmaster General, without any compensation therefor. The right is also reserved to the Postmaster General to authorize the issue by the present contractors of such envelopes and wrappers as may remain in their hands at the close of their contract.

## REPORTS.

The contractor may be required to report weekly, under oath, and in such form as may be prescribed by the Postmaster General, the number, denomination, size, and quality of envelopes and wrappers manufactured (finished, unfinished, and spoiled), the number issued during the week, and the number available for issue.

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## BASIS AND MANNER OF AWARD.

The contract will be awarded on the basis of the issues, in round numbers, of corresponding sizes and qualities, for the year ending December 31, 1897, as follows:

No. 1, 1st quality.....	481,000
No. 2, 1st quality.....	9,868,000
No. 2, 2d quality.....	876,000
No. 3, 1st quality.....	62,882,000
No. 3, 2d quality.....	6,791,000
No. 4, 1st quality.....	6,396,000
No. 5, 1st quality.....	355,957,000
No. 5, 2d quality.....	13,566,000
No. 6, ungummed.....	18,636,000
No. 7, 1st quality.....	6,467,000
No. 7, 2d quality.....	1,147,000
No. 8, 1st quality.....	5,068,000
No. 9, 1st quality.....	3,295,000
No. 10, 1st quality.....	1,932,000
No. 11, 1st quality.....	2,850,000
No. 12, newspaper wrapper.....	40,747,000
No. 13, 1st quality.....	50,742,000
No. 13, 2d quality.....	3,373,000
No. 14, 1st quality.....	7,784,000
No. 14, 2d quality (estimated).....	2,000,000

The denominations of envelopes now in use are 1, 2, 4, and 5 cent, and of newspaper wrappers 1 and 2 cent.

Of 598,554,250 stamped envelopes and wrappers actually issued during the year ending December 31, 1898, 243,678,500 were plain or printed with the blank request, and 354,875,750 were printed with special return requests, the latter being furnished in lots of not less than 500 in any case. The number of different forms of such special requests was 212,589. The newspaper wrappers were without other printing than the embossed stamp. By law the department is not allowed to cause any printing to be done on stamped envelopes beyond a simple request to return to the sender (both name and address being usually given) if not delivered within a stated time.



Bids must be made separately for every size and quality of stamped envelopes and wrappers in the foregoing list, the bidder stating in his proposal the price per thousand envelopes and wrappers, including everything required to be done or furnished, as set forth in these specifications, and the contract will be awarded as a whole to the lowest responsible bidder in the aggregate—the amount of the bid to be ascertained by extending the above numbers at the prices bid respectively, and then aggregating the amounts. It must be understood, however, that any proposal made under the advertisement and these specifications shall impose the obligation to furnish at the prices bid all the envelopes and wrappers that may be ordered by the department during the contract term without regard to the quantities above given, subject to the provision as to those on hand at the termination of the present contract.

Preliminary to an award the bidder will be required to demonstrate to the satisfaction of the Postmaster General, within ten days from the date of notice given him to do so, that he either has in his possession, or is able to procure within a reasonable period, all suitable and necessary facilities with which to properly commence and carry on the contract. If the Postmaster General shall be  
23 satisfied of the inability of a bidder to perform the contract, he may in his discretion decline to accept the bid, and without notice.

#### PROPOSALS—AGREEMENT—BOND.

Each proposal must be signed by the person, partnership, or corporation making it, and when made by a partnership the name of each partner thereof must be disclosed. If made by a corporation, the department must be informed of its name, place of business, object of organization and business, and the name of the officer authorized to bind it by contract; and the proposal must be accomplished with a guaranty, signed by at least two responsible guarantors, or by a regularly incorporated guarantee company, and based upon a penalty of twenty-five thousand dollars, that the bidder shall, within ten days after being called upon to do so, execute a contract with at least two good and sufficient sureties, of the character and to be certified as hereinafter required, or a regularly incorporated guarantee company, to furnish promptly, and in quantities as ordered, the article or articles herein described, and faithfully and diligently to keep, perform, and abide by each and every of the requirements, provisions, and terms of such contract, and these specifications to be thereto annexed, the responsibility and sufficiency of such guarantors to be certified to by a United States circuit or district judge or the United States district attorney for the district in which the bidder resides. And by such contract the contractor and his sureties shall covenant and agree that in case the said contractor shall fail to do or perform all or any of the covenants, stipulations, and agreements of said contract on the part of the said contractor to be performed, as therein set forth, the said contractor and his sureties shall forfeit and pay to the United



States of America two hundred thousand dollars, for which sum the said contractor and his sureties shall be jointly and severally liable, as fixed, settled, and liquidated damages, and not as a penalty to be sued for in the name of the United States. Such sureties shall justify their responsibility by affidavit, showing that they severally own and possess property of the clear value in the aggregate of \$400,000 over and above all debts and liabilities and all property by law exempt from execution, to be sworn to before a district or circuit judge of the United States, and to be approved by the Postmaster General. In the case of a guarantee company, the Postmaster General must be satisfied of its responsibility.

The contract will also provide that if at any time during its continuance the sureties, or either of them, shall die or become irresponsible, the Postmaster General shall have the right to require additional and sufficient sureties, which the contractor shall furnish to the acceptance of the Postmaster General within ten days after notice; and in default thereof, the contract may be annulled. A similar course may be pursued in the case of a guarantee company, should the Postmaster General have reasonable doubt as to its solvency or responsibility.

If the bidder to whom the first award may be made should fail to enter into a contract, as herein provided, then the award may be annulled, and the contract let to the next lowest responsible bidder, and so on until the required contract is executed; and such next  
24      accepted bidder shall be required to fulfill every stipulation embraced herein as if he were the original party to whom the contract was awarded.

The contract will be executed in quadruplicate.

#### RESERVATIONS.

The Postmaster General reserves the right to reject any and all bids if, in his judgment, the interest of the Government shall require it; also the right to annul the contract if, in his opinion, there shall be a failure at any time to perform faithfully any of its stipulations, or in case of any imposition or attempted imposition upon the Department of envelopes or wrappers inferior to those required by the contract.

#### PAYMENTS.

Payments for envelopes and wrappers actually issued and delivered will be made monthly, and not at irregular periods, after proper examination and verification of accounts.

Payments may be withheld by the Postmaster General if it shall appear to his satisfaction that the contract has not been complied with in any particular.

#### CONTRACT NOT ASSIGNABLE.

The contract shall not, in any case, be transferred or assigned.

## EXTENSION.

Should the interest of the Government require it, the contract may be extended for any period or periods beyond the time named, not exceeding six months in all, by order of the Postmaster General, and the contract prices and all conditions herein set forth shall govern in such extended contract.

## BLANK FORMS—SAMPLES—ADDRESS OF PROPOSALS.

Blank forms for bids, with sample envelopes and wrappers attached, showing sizes and style of manufacture and of the quality of the paper, will be furnished upon application; and all proposals must be made upon these blank forms, securely enveloped and sealed, marked on the envelope "Proposals for stamped envelopes and wrappers," and addressed to the Third Assistant Postmaster General, Washington, D. C.

JAMES A. GARY,

*Postmaster General.*

## POST OFFICE DEPARTMENT,

*Washington, D. C., February 28, 1898.*

And whereas, upon the opening in public, on the 30th day of March, 1898, it appeared that there were eleven proposals, the names of the bidders and the amount of their respective bids, based on the number of envelopes issued during the year ending December 31, 1897, being as follows:

25	Horace J. Wickham and Clarence H. Wickham, Hartford, Conn.:	
	(Departmental paper)	8604, 800, 25
	Walter L. Tobey, Hamilton, Ohio:	
	(Departmental paper)	662, 886, 80
	Connecticut River Paper Co., Holyoke, Mass.:	
	(Departmental paper)	512, 863, 85
	(Bidder's paper, excluding 2d quality items)	444, 810, 58
	Purcell Envelope Company, Holyoke, Mass.:	
	(Departmental paper)	467, 206, 18
	Wolf Bros., Philadelphia, Pa.:	
	(Departmental paper)	618, 779, 27
	Holyoke Envelope Company, Holyoke, Mass.:	
	(Departmental paper)	545, 479, 17
	(Bidder's paper "A")	527, 338, 13
	(Bidder's paper "B")	506, 773, 57
	(Bidder's paper "C")	481, 941, 77
	(Bidder's paper "D")	447, 072, 34
	(Bidder's paper "E")	539, 593, 82
	The White, Corbin & Co., Rockville, Conn.:	
	(Departmental paper, for part of items only)	45, 957, 19
	(Bidder's paper, "No. 1," for part of items only)	452, 707, 38
	(Bidder's paper, "Extra No. 1," for part of items only)	479, 637, 02
	Albert Deggett, Piedmont, W. Va.:	
	(Departmental paper)	602, 381, 06
	(Bidder's paper, "A")	635, 956, 08
	(Bidder's paper, "B")	565, 676, 97
	P. P. Kellogg & Co., Springfield, Mass.:	
	(Departmental paper)	539, 925, 10
	(Bidder's paper)	531, 729, 45

Plimpton Manufacturing Company and Morgan Envelope Company,  
Hartford, Conn.:

(Departmental paper) .....	\$482, 255. 75
(Bidder's paper "A") .....	461, 291. 06
(Bidder's paper "B") .....	506, 241. 94

American Envelope Company, West Carrollton, Ohio:

(Departmental paper) .....	598, 188. 83
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And whereas the Postmaster General decided to reject all proposals for furnishing envelopes of paper not made according to the department's formula:

And whereas it appeared that the proposal of the said Purcell Envelope Company was the lowest in the aggregate for all stamped envelopes called for, according to the department's formula, by reason whereof the contract was awarded to it on the 20th day of April, 1898, as appears by order of the Postmaster General, numbered 149, and recorded in the official journal of the department:

Now, therefore, in consideration of the premises and of the stipulations hereinafter set forth, the said Purcell Envelope Company, contractor, and its sureties, parties of the second part, do hereby jointly and severally undertake, covenant, and agree, to and with the United States of America, and do bind themselves in manner following, that is to say:

First. That the said contractor shall furnish and deliver promptly and in quantities as ordered, and subject to the approval of the Postmaster General in every respect, all the stamped envelopes and newspaper wrappers that it may be called upon by the Post Office Department to furnish during the four years beginning on the 1st day of October, 1898, of any denominations, and of the sizes, qualities, and descriptions stated in the following list:

Post-office designation.	Description of envelopes and wrappers.	Quality.	Color.	Size (inches).
1	Note size.....gummed.	First .....	White only.....	2½ by 5½.
2	Full letter size....."	" .....	*White or amber...	3½ by 5½.
3	Full letter size....."	Second.....	" .....	4½ by 5½.
4	Commercial size....."	First.....	" .....	3½ by 5½.
5	Commercial size....."	Second.....	" .....	4½ by 5½.
6	Trade size....."	First.....	" .....	3½ by 5½.
7	Extra letter size....."	" .....	" .....	3½ by 6½.
8	Extra letter size....."	Second.....	" .....	" .....
9	Extra letter size.....ungummed.	" .....	Plain Manila .....	" .....
10	(for inclosing circulars.)	" .....	" .....	" .....
11	Official size.....gummed	First.....	*White or amber...	3½ by 8½.
12	Official size....."	Second.....	" .....	4½ by 9½.
13	Large official size....."	First.....	" .....	4½ by 10½.
14	Extra large official size....."	" .....	" .....	3¾ by 11.
15	Small baronial size....."	" .....	White only.....	4½ by 11.
16	Large baronial size....."	" .....	" .....	4½ by 11.
17	Newspaper wrappers....."	" .....	Plain Manila .....	5½ by 10½.
18	Legal size....."	First.....	*White or amber...	3½ by 6½.
19	Legal size....."	Second.....	" .....	" .....
20	Extra legal size....."	First.....	" .....	3½ by 6½.
21	Extra legal size....."	Second.....	" .....	" .....

Second. That the paper from which the first quality of envelopes, numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, and 14 are to be manufactured shall be made especially for the purpose, of the best grades

of white linen and of white domestic cotton rags, in the proportion of 35 per cent of linen and 65 per cent of cotton, excluding all other material except the necessary chemicals, and it shall weigh not less than 50 pounds a ream of 500 sheets, measuring  $22\frac{1}{2}$  by 30 inches, or in that proportion. It shall be sized by being run through a tub of animal sizing, and shall be loft dried, or dried by some process of air drying, which, in the judgment of the Postmaster General, will produce equally good results.

That the selection of either loft-dried or air-dried paper is to be made by the Postmaster General before the contractor is ready to begin the manufacture of envelopes; but should the Postmaster General decide upon the use of air-dried paper, and the result, after a sufficient trial of such paper, is not satisfactory, he is to have the right to require the contractor, upon due notice given it, to substitute loft-dried paper.

That the paper from which the second quality of envelopes, 2, 3, 5, 7, 13, and 14, are to be manufactured shall be made especially for the purpose of 75 per cent of what are known as "No. 2 country rags," composed of about one-half soiled whites and one-half blues (except that other rags of an equivalent character and quality may be used instead, after having been approved in writing by the Postmaster General) and 25 per cent of bleached sulphite pulp, excluding all other material except the necessary chemicals, and it shall weigh not less than 40 pounds a ream of 500 sheets, measuring  $22\frac{1}{2}$  by 30 inches, or in that proportion. It shall be sized by being run through a tub of animal sizing.

The paper of both the above qualities shall be made on a Fourdrinier machine.

That the paper from which the newspaper wrappers, No. 12, are to be manufactured shall be composed of 95 per cent of jute butts and 5 per cent of South Carolina clay, excluding all other material except the necessary coloring matter, and shall weigh  $34\frac{1}{2}$  pounds a ream of 500 sheets measuring  $22\frac{1}{2}$  by 30 inches, or in that proportion. In the process of manufacture the jute butts shall be washed six hours in the washing engines and beaten ten hours in the beating engines and the stock passed through a Jordan engine, and the paper shall be rosin sized in the engine and made on a Fourdrinier machine.

That the paper from which the ungummed envelopes, No. 6 (for inclosing circulars), are to be manufactured shall be composed of the same materials, in the same proportions, and subject to the same conditions as the paper for the newspaper wrappers, No. 12, except that it shall weigh not less than  $29\frac{1}{2}$  pounds a ream of 500 sheets measuring  $22\frac{1}{2}$  by 30 inches, or in that proportion.

That all the paper shall be clean and free from imperfections, run and calendered to a uniform weight and thickness, and that for the first quality envelopes and No. 6 envelopes and newspaper wrappers shall be the same in color, quality, material, tensile strength, and all

other respects as the samples furnished to bidders, and to be made a part of the contract.

That the colors of the second quality paper shall be the same as those of the first quality, and its tensile strength shall be as great as that of second quality paper under the contract now in force with James Purcell.

That the paper shall also be watermarked with such designs as may be approved by the Postmaster General. The right is reserved by the Postmaster General to change the color of any or all of the papers at any time during the existence of the contract; but in making such changes no more expensive colors shall be selected than those in the contract samples.

That all papers furnished or used shall be subject to the supervision and approval of the Postmaster General or his authorized agent before and after being manufactured into envelopes and wrappers.

That watermarked paper that may be spoiled in the process of manufacture or condemned as unfit for use shall not be used or sold by the contractor in its manufactured state, but shall be reduced to pulp or otherwise destroyed, under such regulations as the Postmaster General may prescribe; and such spoiled and rejected paper shall not be made over for stamped envelopes or wrappers, nor shall clippings and shavings of any kind be used for this purpose.

That the watermark designs in the dandy rolls shall be destroyed, under the supervision of the Postmaster General or his authorized agent, when no longer required for use.

Third. That all the envelopes and wrappers shall be embossed with postage stamps of such denominations, styles, and colors as the Postmaster General may require—the embossing to be done in the highest style of the art, and all the impressions to be clear, distinct, and perfect—and they shall also bear such printing as the Postmaster General may direct, of any desired style of type, the execution of which shall be clear and distinct, without smear or set-off, and otherwise free from imperfections; that the ink used for embossing and printing shall be of such colors and quality as may from time to time be approved by the Postmaster General, the right, however, being reserved to him to change these colors at pleasure; that the envelopes shall be

made in the most workmanlike manner after the styles and of  
28 the cuts shown by the samples hereto attached, the cut, however, of envelope 8 to be the same as those of envelopes 7 and 9, and the cut of envelope 11 to be like that of envelope 10, the joints to be well and securely fastened with the best quality of adhesive gum, and the gumming on the flap (except for circulars) to be not less than half an inch in width for the length shown by the samples; that the wrappers shall be gummed not less than three-quarters of an inch in width across the end; that the envelopes and wrappers shall be subject in all respects to the approval of the Postmaster General or his duly authorized agent, and his right of rejection shall be absolute.

Fourth. That the contractor shall hold, subject to the order and control of the Postmaster General, all dies, original and working, from

which stamped envelopes and wrappers are to be embossed, and which may at any time be turned over to it, or be made or procured by it, or be in its possession; that it shall begin work under this contract with such of the dies, either original or working, now in use as can be spared by the present contractor from current work, unless a renewal of them be necessary, or with new dies where the old ones can not be spared, or with dies of new designs, if the Postmaster General shall determine to adopt such before the term of this contract begins, in any of which cases the necessary new dies shall be at once prepared, so that envelopes and wrappers, either of the old or the new designs, shall be issued immediately upon the beginning of the contract term; that the work of preparing new designs, if determined on by the Postmaster General, and of the necessary dies, shall be done under his direction and subject to his approval, and by such persons as may be approved by him, all expenses connected therewith to be borne by the contractor; that the contractor shall, at its own expense, keep in repair and renew when necessary, or when it shall be directed by the Postmaster General, all dies from which stamped envelopes and wrappers are embossed, and should additional denominations be required at any time they shall be prepared and furnished in a reasonable time at the expense of the contractor, and subject to the approval of the Postmaster General, all the work in connection with the preparation, renewal, and repair of the dies, or with any change of designs (the right to make such changes at pleasure during the existence of this contract being reserved to the Postmaster General), to be done under the immediate supervision of the contractor and the Government agent, by such parties as may be approved by the Postmaster General and in accordance with such regulations as he may prescribe; that no dies, either original or working, shall be made, procured, or used without the approval of the Postmaster General or his authorized agent; that the contractor shall not manufacture, or permit to be manufactured by any person in its employ, any dies for producing stamped envelopes except such as may be required for its use in carrying out this contract, and it shall be liable in damages for the unauthorized manufacture of such dies, and for the production of stamped envelopes therefrom; that the contractor shall be responsible for the safe-keeping of the dies while in its use or custody, and when not in use the dies shall be safely stored and kept in such manner and under such regulations as the Postmaster General may prescribe; that all dies or hubs made or used at any time in filling this contract shall immediately become the absolute property of the United States, and, together with those that may be turned over to the contractor, shall be delivered in good working order to the Postmaster General or his authorized agent whenever demanded; and all wornout or discontinued dies may be required to be canceled or destroyed at the discretion of the Postmaster General, under such regulations as he may prescribe.

Fifth. That the contractor shall faithfully account to the Post Office Department for all stamped envelopes and wrappers printed

or produced from the regularly authorized dies and paper, and shall be liable in damages for the theft or misappropriation of any stamped envelopes and wrappers that may be manufactured by it or come into its custody as contractor.

Sixth. That the contractor shall not prepare, or knowingly allow to be prepared, in the stamped envelope manufactory or in any other establishment or place under its control, any dies, paper, or other materials from which stamped envelopes or wrappers similar to those supplied for the Post Office Department can be made or produced, except such as are required to be furnished under this contract, but it shall use every possible means to prevent the issue by anyone not duly authorized of stamped envelopes or wrappers, or parts thereof, from the dies or paper made and used for the Post Office Department, or of any other envelopes or wrappers in any way resembling them; and it shall also faithfully account to the Post Office Department for all stamped envelopes and wrappers printed or produced from the regularly authorized dies and paper, and use every endeavor to prevent the appropriation or abstraction by any person in its employ or connected with it, or by any other person, of any stamped envelopes or wrappers so printed or produced.

Seventh. That the envelopes and wrappers shall be manufactured in a strictly first-class building of such construction as to afford security against loss by fire or theft, and in apartments separate and distinct from those in which any other work is done, and when finished and awaiting issue they shall be stored in a fire and burglar proof vault or room on or immediately connected with the premises and specially fitted up for the purpose, the said building, apartments, and vault to be subject to the approval of the Postmaster General or his authorized agent; that special provision shall also be made by the contractor for the safe keeping on the premises of the envelopes and wrappers while in course of preparation, under such regulations as may be prescribed by the Postmaster General or his authorized agent, and subject to his approval; that the building shall at all hours of the day and night be policed or guarded in such manner as the Postmaster General shall require.

Eighth. That the contractor shall at all times keep on hand a stock of the several kinds and denominations of finished envelopes and wrappers sufficient to promptly meet all orders of the department and to provide against any and all contingencies that may be likely to occur during the existence of this contract, such stock to be always equal to an average ten days' supply of ordinary envelopes of the several denominations and sizes (not including special-request envelopes); and said envelopes and wrappers shall be held subject to the control of the Postmaster General or his authorized agent or agents, and the Postmaster General shall have the right to require the contractor at any time during the existence of the contract to provide an extra quantity of envelopes and wrappers, not exceeding a supply for six months.



30 Ninth. That the envelopes and wrappers shall be banded in parcels of 25 and packed in strong pasteboard or straw boxes (not inferior to No. 50 unlined Western strawboard), securely bound on the corners and edges with cotton cloth, and of such quality, weight, and construction as shall be approved by the Postmaster General or his authorized agent, each box to contain not more than 500 and not less than 250 each of envelopes 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, and 14, and not more than 500 and not less than 100 of envelopes 7, 8, and 9; that every box shall bear a label specifying the number, size, quality, and denomination of its contents; that when less than 4,000 envelopes or wrappers are required to fill the order of a postmaster the boxes containing them shall be put up in suitable packages, or in one package, securely wrapped with strong manila paper and sealed so as to safely bear transportation by mail; that when 4,000 or more are required the pasteboard or straw boxes containing them shall be packed in strong wooden cases, well strapped with hoop iron or wire, each case to contain such number of envelopes, not exceeding 25,000, as the discretion of the Postmaster General may from time to time direct; that said cases shall be addressed by the contractor, under the direction of the agent of the department; that labels of direction, to be furnished and addressed by the agent, shall be affixed to the sealed packages by the contractor; and all blanks that may be necessary in sending out envelopes shall also be furnished and filled out by the agent.

Tenth. That the contractor shall be ready to commence the delivery of the envelopes and wrappers on the 1st day of October, 1898, when the contract term begins, and thereafter they shall be promptly furnished and delivered, complete in all respects, in such quantities as may be required to fill the orders of the department. Delivery may be required at the post office or at the agency at the place of manufacture, or at the nearest adjacent large post office with adequate facilities for handling and mailing, or at a railway post office, in the discretion of the Postmaster General.

Eleventh. That the contractor shall report weekly, under oath, and in such manner and form as may be prescribed by the Postmaster General, the number, denomination, size, and quality of envelopes and wrappers manufactured (finished, unfinished, and spoiled), the number issued during the week, and the number available for issue.

And the United States of America, party of the first part, hereby contracts and agrees:

First. To pay the said contractor for the stamped envelopes and newspaper wrappers accepted and delivered in pursuance of this contract, subject to the reservation hereinafter stated, at the following rates, which shall be full compensation for everything required to be done or furnished as herein set forth, payments to be made monthly after proper examination and verification of accounts:

For No. 1 envelopes, first quality, white only,  $2\frac{1}{2}$  by  $5\frac{1}{4}$  inches, sixty-five cents a thousand.



For No. 2 envelopes, first quality, white or amber,  $3\frac{1}{4}$  by  $5\frac{1}{2}$  inches, seventy-three cents a thousand.

For No. 2 envelopes, second quality, white or amber,  $3\frac{1}{4}$  by  $5\frac{1}{2}$  inches, sixty cents a thousand.

For No. 3 envelopes, first quality, white or amber,  $3\frac{3}{8}$  by  $5\frac{1}{8}$  inches, seventy-five cents a thousand.

For No. 3 envelopes, second quality, white or amber,  $3\frac{3}{8}$  by  $5\frac{1}{8}$  inches, sixty cents a thousand.

31 For No. 4 envelopes, first quality, white or amber,  $3\frac{3}{8}$  by  $5\frac{1}{8}$  inches, eighty-five cents a thousand.

For No. 5 envelopes, first quality, white or amber,  $3\frac{1}{2}$  by  $6\frac{5}{16}$  inches, seventy-eight cents a thousand.

For No. 5 envelopes, second quality, white or amber,  $3\frac{1}{2}$  by  $6\frac{5}{16}$  inches, seventy cents a thousand.

For No. 6 envelopes, ungummed, plain manila,  $3\frac{1}{2}$  by  $6\frac{5}{16}$  inches, fifty-five cents a thousand.

For No. 7 envelopes, first quality, white or amber,  $3\frac{3}{4}$  by  $8\frac{1}{2}$  inches, one dollar and fifty cents a thousand.

For No. 7 envelopes, second quality, white or amber,  $3\frac{3}{4}$  by  $8\frac{1}{2}$  inches, one dollar and fifteen cents a thousand.

For No. 8 envelopes, first quality, white or amber,  $4\frac{1}{4}$  by  $9\frac{1}{2}$  inches, one dollar and eighty cents a thousand.

For No. 9 envelopes, first quality, white or amber,  $4\frac{1}{2}$  by  $10\frac{1}{2}$  inches, one dollar and ninety-five cents a thousand.

For No. 10 envelopes, first quality, white only,  $3\frac{9}{16}$  by  $4\frac{1}{2}$  inches, eighty cents a thousand.

For No. 11 envelopes, first quality, white only,  $4\frac{1}{4}$  by  $5\frac{1}{4}$  inches, ninety cents a thousand.

For No. 12 newspaper wrappers, plain manila,  $5\frac{1}{2}$  by  $10\frac{1}{2}$  inches, forty-five cents a thousand.

For No. 13 envelopes, first quality, white or amber,  $3\frac{3}{4}$  by  $6\frac{3}{4}$  inches, eighty-five cents a thousand.

For No. 13 envelopes, second quality, white or amber,  $3\frac{3}{4}$  by  $6\frac{3}{4}$  inches, seventy-eight cents a thousand.

For No. 14 envelopes, first quality, white or amber,  $3\frac{3}{4}$  by  $6\frac{5}{16}$  inches, ninety-two cents a thousand.

For No. 14 envelopes, second quality, white or amber,  $3\frac{3}{4}$  by  $6\frac{5}{16}$  inches, eighty-two cents a thousand.

2d. To place at the service of the contractor, on or before the first day of October next, if required, or in time to properly begin work under this contract, such of the original and working dies from which stamped envelopes are now being embossed as can be spared by the present contractor from current work, unless the Postmaster General, as hereinbefore prescribed, shall require new dies either of the old or new designs of stamps to be used when the contract term begins.

It is further stipulated and agreed by and between the contracting parties:

1. That a resident agent and inspector of the department shall have supervision of the manufacture, storage, and issue of the envelopes

and wrappers, and shall at all times have full and free access to the building, apartments, and vault where the envelopes and wrappers are manufactured and stored, for the purpose of inspecting them; that the contractor shall furnish this agent and his clerks suitable and properly furnished office rooms (including janitor's service) connected with the premises on which the envelopes and wrappers are manufactured, stored, and issued for the transaction of the business of the agency, without cost to the Government; that the contractor shall also furnish, without charge, suitable and properly furnished office rooms for registering and otherwise preparing packages of envelopes and wrappers to be forwarded through the mails; that the apartments and rooms for manufacturing, storing, and registering envelopes and wrappers shall be connected with one another by communicating doors, all of which shall be constructed and fitted up to the satisfaction of the Postmaster General or his authorized agent.

2. That the Postmaster General shall have the right to cause special inspection to be made at any time by any agent or agents whom he may designate for the purpose, of the building, rooms, and apartments used for the manufacture and storage of envelopes and wrappers, and of the envelopes and wrappers in course of manufacture or in stock; and the contractor, its employees, and agents, shall conform to such regulations as the department may from time to time adopt for the security of the Government.

3. That the Postmaster General shall have the right to cause inspection to be made, when, in such manner, and as often as he may desire it, of the process of manufacturing the paper in all its several stages, and of stationing an agent, for the purpose of inspection, at the mill or mills where the paper is made; in which latter case the contractor will be required to furnish such agent with a properly furnished room in the mill without charge, and give him every needful facility for carrying out his duty.

4. That the right is also reserved to the Postmaster General to increase or diminish, at any time during the contract term, the standard weights of any of the different qualities of paper, upon condition that he shall pay a proportionate increase or decrease of price, to be determined upon the actual cost to the contractor of the paper in use at the time of the change.

5. That the right is also reserved by the Postmaster General to change the color of any or all of the papers at any time during the existence of the contract; but in making such changes no more expensive colors shall be selected than those in the contract samples.

6. That all envelopes and wrappers spoiled in process of manufacture or rejected shall be destroyed by the agent of the department in the presence of the contractor's representative, or otherwise disposed of as the Postmaster General may direct, and payment will not be made for envelopes or wrappers thus spoiled or rejected.

7. That, should the use of any of the above sizes or qualities be discontinued during the contract term, the contractor shall not be entitled to any compensation for damages resulting therefrom.

8. That, should the contractor, in the performance of work under the contract, make unauthorized use of any machinery or material, or other thing on which a patent has been granted by the United States, the Government is to be made free of all liability for such infringement.

9. That the Postmaster General shall have the right to impose a fine upon the contractor, in such sum as he may deem proper, to be deducted in the settlement of accounts, for the failure to have on hand at any time a sufficient supply of envelopes and wrappers with which to promptly meet all requisitions of the department.

10. That, in the event that the exigencies of the public service shall require the acceptance by the department of any envelopes or wrappers which, in the opinion of the Postmaster General or of his authorized agent, do not fulfill the requirements of the contract, the right is reserved to the Postmaster General to pay for such inferior envelopes and wrappers anything less than the regular price fixed by the contract that may seem to him just under all the circumstances, which payment shall be a complete discharge of all liability on the part of the Government for such envelopes and wrappers.

33 11. That on failure of the contractor to promptly furnish any envelopes or wrappers that may be called for under the contract, the Postmaster General shall have the right to purchase them in the open market; and if a greater price be paid than that prescribed by the contract for like articles, the difference shall be charged to the contractor; and failure to furnish any envelopes or wrappers within a reasonable time after they shall have been ordered may be regarded by the Postmaster General as a sufficient cause for annulling the contract.

12. That the Postmaster General also reserves the right to impose a fine or fines upon the contractor for errors made, whereby either a greater or less number of envelopes and wrappers are issued to postmasters than are called for on the orders of the department.

13. That the department shall, after satisfactory inspection, accept and pay for, at the regular contract prices, the stock of stamped envelopes and wrappers that may remain on hand at the close of the contract term; and the contractor may be required to issue them subject to the conditions of the contract, but provided that such stock shall not exceed in quantity the average requirements of the department for a period of fifteen days; and any surplus over that quantity may be destroyed, at the discretion of the Postmaster General, without any compensation therefor.

14. That if at any time during the continuance of the contract the surety hereto shall become irresponsible, the Postmaster General shall have the right to require additional and sufficient sureties, which the contractor shall furnish to the acceptance of the Postmaster

General within ten days after notice, and in default thereof the contract may be annulled.

15. That the Postmaster General shall have the right to annul the contract if, in his opinion, there shall be a failure at any time to perform faithfully any of its stipulations, or in case of any imposition or attempted imposition upon the department of envelopes or wrappers inferior to those required by the contract.

16. That payments may be withheld by the Postmaster General if it shall appear to his satisfaction that the contract has not been complied with in any particular.

17. That the contract shall not in any case be transferred or assigned.

18. That, should the interest of the Government require it, the contract may be extended for any period or periods beyond the time named, not exceeding six months in all, by order of the Postmaster General, and the contract prices and all conditions herein set forth shall govern in such extended contract.

19. That no Member of or Delegate to Congress shall be admitted to any share or part of this contract, as provided by sections 3739, 3740, and 3741 of the Revised Statutes of the United States; and each and all of the provisions in said sections shall be deemed a part of this contract.

20. That in case the said contractor shall fail to do or perform all or any of the covenants, stipulations, and agreements of said contract on the part of the said contractor to be performed, as therein set forth, the said contractor and its sureties shall forfeit and pay to the United States of America two hundred thousand dollars, for

34 which sum the said contractor and his sureties shall be jointly and severally liable, as fixed, settled, and liquidated damages, and not as a penalty, to be sued for in the name of the United States.

And for the faithful and diligent keeping, performing, and abiding by each and every of the requirements, provisions, and terms of this contract, and the specifications hereto attached and made a part hereof, the said parties of the second part do hereby bind themselves, and each of them, their and his heirs, executors, and administrators, and their successors in office.

In witness whereof the said Postmaster General has caused the seal of the Post Office Department of the United States of America to be hereunto affixed, and has attested the same by his signature; and the said parties of the second part have hereunto set their hands and seals on and as of the day hereinbefore written.

\_\_\_\_\_  
*Postmaster General.*

Attest:

\_\_\_\_\_  
*Third Assistant Postmaster General.*

(Signed)

THE PURCELL ENVELOPE CO.,  
By JAMES PURCELL, *Pres.*

Witness:

(Signed)

CYRUS S. SEDGWICK,  
J. WHITMORE BARRY.

Attest:

(Signed)

ERNEST L. HICKS.

(Signed)

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND,By HENRY B. PLATT, *Vice President*.

(Surety.) Attest:

JOHN W. WOOTEN, *Attorney*.

Attest:

(Signed)

C. V. R. MARSH.

STATE OF NEW YORK,

*City and County of New York, ss:*

On the twenty-second day of April, in the year 1898, before me personally came Henry B. Platt, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he was the vice president of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3 of chapter 720 of the session laws of the State of New York for the year 1893. And the said Henry B. Platt further said that he was acquainted with John W. Wooten and knew him to be the attorney of said company; that the signature of the said John W. Wooten, subscribed to the

35 within instrument, was in the genuine handwriting of the said John W. Wooten, and was subscribed thereto by like order of the board of directors and in the presence of him, the said Henry B. Platt.

[NOTARIAL SEAL.]

(Signed)

J. WHITMORE BARRY,

*Notary Public, New York County.*

*Statement of condition of Fidelity and Deposit Company of Maryland at the close of business December 31st, 1897.*

## RESOURCES.

Real estate (Fidelity Building)	8600,000.00
Baltimore city stock, 3½ per cent, 1928-1930-1940-1945	520,820.00
Baltimore city stock, 6 per cent, 1900	49,440.00
New York City gold export dock bonds	218,000.00
State of Maryland Insane Asylum bonds, 3½ per cent loan	105,000.00
State of Georgia 4½ per cent bonds, 1911-1912-1916	139,750.00
State of Tennessee 3 per cent bonds	26,400.00
City of Buffalo, N. Y., 34 per cent bonds	51,500.00
City of Westminster, Md., 4½ per cent bonds	25,000.00
City of Frederick, Md., 4 per cent bonds	28,600.00
City of Petersburg, Va., 5 per cent bonds	26,500.00

City of Richmond, Va., 4 per cent bonds	\$25,000.00
Lucas County, Ohio, courthouse 4 per cent bonds	30,000.00
Baltimore Traction Co. bonds (N. B. Division), 1st 5's	115,000.00
City and Suburban Ry. Co. of Baltimore bonds, 1st 5's	54,240.00
Virginia Midland R. R. Co. 6 per cent bonds	47,420.00
Charlotte, Columbia and Augusta R. R. Co. bonds	26,750.00
Petersburg R. R. Co. Class "B" 6 per cent bonds	11,400.00
Georgia Pacific R. R. Co. 6 per cent bonds	12,980.00
Raleigh and Gaston R. R. Co. 5 per cent bonds	30,000.00
Wilmington and Weldon R. R. Co. 5 per cent bonds	58,000.00
Agents' debit balances, less commissions	95,116.34
Premiums in course of collection (home office)	6,020.43
Cash in office and banks	188,587.56

2,500,524.33

## LIABILITIES.

Capital stock (paid in)	\$1,000,000.00
Surplus	1,000,000.00
Premium-reserve requirement	435,089.69
Claims adjusted (checks out)	1,268.41
Claims in process of adjustment	6,561.37
Claims reported, but proof not filed, etc	20,507.71
Undivided profits	37,097.15

2,500,524.33

## STATE OF NEW YORK,

*City and County of New York, ss:*

John W. Wooten, being duly sworn, says that he is the attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said company, as of December 31st, 1897, to the best of his knowledge and belief, and that the financial condition of said company is as favorable now as it was when such statement was made.

(Signed) JOHN W. WOOTEN.

Subscribed and sworn to before me this 22d day of April, 1898.

[NOTARIAL SEAL.] (Signed) J. WHITMORE BARRY.

*Notary Public, New York County.*

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## CLAIMANT'S EXHIBIT "B."

*Bill filed July 22, 1898. J. R. Young, clerk. In the Supreme Court of the District of Columbia, holding a special term in equity.*

THE PURCELL ENVELOPE COMPANY, COM-  
plainant.

v.

CHARLES EMORY SMITH, POSTMASTER GENERAL  
of the United States of America.

In equity, No. 19592;  
docket No. 45.

*To the honorable the justice of the Supreme Court of the District of Columbia holding said equity term:*

Your petitioner, the Purcell Envelope Company, respectfully represents:

1. That it is a corporation duly organized and existing under the laws of the State of New York, and that it brings this suit in its own right, as hereinafter more particularly set forth.

2. That the defendant, the said Charles Emory Smith, is the Postmaster General of the United States, and in his capacity as such is sued, as hereinafter specifically set forth.

3. Your complainant further avers that heretofore, to wit, on or about the 28th day of February, 1898, the then Postmaster General of the United States, the Honorable James A. Gary, predecessor of the said Charles Emory Smith, being thereto duly authorized and empowered by law, advertised for proposals for the manufacture of stamped envelopes and newspaper wrappers, in such quantities as might be called for by the Post Office Department during the period of four years beginning on the first day of October, 1898, and furnished certain specifications, to which the said proposals were required to conform, a copy of which said advertisement and specifications is hereto annexed, made a part hereof, and marked Exhibit A.

4. Your complainant further avers that, pursuant to said advertisement, your complainant filed in said department certain proposals for furnishing the said stamped envelopes and newspaper wrappers during the period aforesaid, a copy of which said proposal is hereunto annexed, made a part hereof, and marked Exhibit B; and that your complainant accompanied said proposal with a good and sufficient bond, in the sum of \$25,000, conditioned, as in said specifications required, to enter into and duly execute the contract for said work in the event that the same should be awarded to your complainant; that divers other parties likewise made proposals for the furnishing of said envelopes and wrappers; and that afterwards, to wit, on the 30th day March, 1898, the said several proposals above mentioned were duly opened, examined, and considered by the said James A. Gary, the then Postmaster General as aforesaid, and such action was had thereon that the said James A. Gary awarded the contract for the furnishing of said envelopes and wrappers to your complainant for and during the period above mentioned, a copy of which said award is hereunto annexed, made a part hereof, and marked Exhibit C.

5. Your complainant further avers that thereafter, to wit, on the 20th day of April, 1898, your complainant was notified by Hon. John A. Merritt, the Third Assistant Postmaster General, who was thereto duly authorized, of the acceptance by the said James A. Gary, the predecessor of the defendant herein as aforesaid, of the proposal of your complainant and of the awarding to your complainant of the said contract for the furnishing of the stamped envelopes and newspaper wrappers aforesaid, and that a form of contract would be forwarded to complainant for execution, a copy of which notification is hereunto annexed, made a part hereof, and marked Exhibit D; that after the making of said award in favor of your complainant, as hereinbefore averred, a record thereof was duly made in accordance with the rules and regulations of the Post Office Department, and signed by the said James A. Gary, Postmaster General as aforesaid, and duly recorded in the records of the said Post Office Department.



6. Your complainant further avers that, to wit, on the 21st day of April, 1898, the aforementioned formal contract in writing was transmitted in quadruplicate to your complainant by the said John A. Merritt, Third Assistant Postmaster General as aforesaid, being thereto duly authorized, the same having been prepared in said department. A letter of transmittal accompanying the same requested that said formal contract be at once executed by your complainant and returned to the said Post Office Department, a copy of the letter transmitting said contract being hereto attached, made a part hereof, and marked "Exhibit E." Your complainant is unable to produce a copy of the said formal contract, because all of the copies thereof are in the possession of the defendant, and complainant calls upon the defendant, in his answer, to furnish and attach to such answer a true and correct copy of said formal contract, in this paragraph referred to.

7. Your complainant further avers that pursuant to the notification and request mentioned in the next preceding paragraph of this bill, your complainant, within the time required by the specifications aforesaid, duly executed said contract in quadruplicate and delivered the same as required, furnishing at the same time a good and sufficient bond in the sum of \$200,000 for the faithful performance of said contract, as required in the specifications hereinbefore set forth, and which said contracts so executed as aforesaid were duly accepted without objection by the Postmaster General.

8. Your complainant further avers that before the making of said award the said James A. Gary, the then Postmaster General as aforesaid, caused examination and investigation to be made with reference to the financial ability of your complainant to perform the said contract, and also of the buildings and appliances of your complainant required to be used in the performance thereof; that the said Postmaster General ascertained to his satisfaction that your complainant was in all respects fitted to and capable of performing said contract, and your complainant, within the time limited therefor in said specifications, satisfied the said Postmaster General that your complainant then had in its possession all suitable and necessary facilities with which to properly commence and carry on the same; that the said Postmaster General, being so satisfied of the ability of your complainant to perform said contract, awarded the same to your complainant as hereinbefore set forth.

39 9. Your complainant further avers that it is informed and believes that notwithstanding the awarding of said contracts to your complainant as aforesaid, and notwithstanding that, as your complainant is informed and believes and therefore avers, the awarding of said contract in manner and form as hereinbefore set forth constitutes a valid and binding contract between your complainant and the United States for the furnishing of said envelopes and wrappers as aforesaid and in which complainant has a vested right; the defendant, the said Charles Emory Smith, in the meantime having succeeded the said James A. Gary in his capacity as such Post-



master General, is threatening to disregard, set aside, and annul the said contract with your complainant and to authorize some other person, firm, or corporation to furnish said envelopes and newspaper wrappers during the period aforesaid, in utter disregard of the rights of your complainant under the contract aforesaid.

10. Your complainant further represents that it is in all respects ready, able, and willing to perform said contract; that it has a large and expensive building specially constructed and prepared and suitable in all respects for the performance of said contract in accordance with the terms thereof and with the requirements of the specifications hereinbefore referred to, and that your complainant has placed in said building a large amount of expensive machinery especially adapted and fitted for the performance of said work, and which machinery was procured and placed in said building with especial reference to the bidding for and securing of the contract for the furnishing of said envelopes and newspaper wrappers, and being especially adapted to that purpose, is in its present condition unsuitable for any other and can not be adapted to any other use without great expense; that said building and machinery are now held and owned by your complainant for the special purpose of the performance of said contract, and that, as hereinbefore set forth, your complainant is financially and in every other way able to perform said contract, and is ready and willing so to do; that your complainant is in no respect in default in regard to any of the matters hereinbefore referred to, and that if the defendant should carry out his purpose to let said contract to another, as hereinbefore set forth, such action by the said defendant would be a deprivation of his said vested rights and would subject the complainant to irreparable injury; and your complainant is advised, and therefore avers, that, by reason of the character of the matters hereinbefore set forth, if the said defendant shall so disregard, set aside, and annul the said contract and authorize some other person or corporation to furnish said envelopes and wrappers, your complainant will be without adequate remedy at law to obtain redress for such irreparable injury.

Wherefore, the premises considered, your complainant prays:

PRAYERS.

1. That the process of this court may issue to the defendant, commanding him to appear and answer the exigencies of this bill of complaint, but not under oath, answer under oath being hereby expressly waived.

2. That during the pendency of these proceedings, and also at the final determination thereof, the defendant, the said Post-  
40 master General, be enjoined and restrained by the decree and order of this court from in anywise setting aside, annulling, or refusing to perform said contract, from permitting or authorizing anyone whomsoever other than your complainant to furnish said envelopes and newspaper wrappers, from entering into any contract

with any other person or corporation whatsoever therefor, and from doing any act or thing whatsoever to interfere with or in any way hinder the performance of said contract by your complainant, and that upon the final hearing of this cause said order be made perpetual.

3. And for all other and proper relief in the premises.

THE PURCELL ENVELOPE COMPANY,  
By H. E. TOWNSEND, *Vice President*,  
J. M. WILSON,

*Solicitor for Complainant.*

DISTRICT OF COLUMBIA, ss:

Before me, the undersigned, personally appeared Henry E. Townsend, vice president of The Purcell Envelope Company, who, being by me first duly sworn, on oath says: That he has read the foregoing bill by him subscribed as vice president of The Purcell Envelope Company, and knows the contents thereof; that the matters and things therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

HENRY E. TOWNSEND.

Subscribed and sworn to before me this 22nd day of July, A. D. 1898.

J. R. YOUNG, *Clerk*,  
By L. P. WILLIAMS, *Asst. Clerk*.

Filed July 22, 1898. J. R. Young, clerk.

EXHIBIT C.

Copy.

OFFICE OF THE POSTMASTER GENERAL.

*Washington, D. C., April 20, 1898.*

Order No. —.

It is hereby ordered—

1st. That all the bids for furnishing stamped envelopes presented to this department on the 30th ultimo under its advertisement and specifications of February 28, 1898, which involve the use of paper different from that described in the specifications as the Government standard be rejected.

2nd. That the contract for furnishing the envelopes called for by the advertisement and specifications referred to be awarded to The Purcell Envelope Company, of Holyoke, Mass., as the lowest bidder for the Government standard of paper, at the following prices a thousand, namely:

No. 1, 1st	quality	-----	\$0.65
No. 2, 1st	"	-----	.73
"	2nd	-----	.60

No. 3, 1st	"	-----	\$0. 75
No. 3, 2nd quality		-----	. 60
41 No. 4, 1st	"	-----	. 85
No. 5, 1st	"	-----	. 78
No. 5, 2nd quality		-----	. 70
No. 6, manila		-----	. 55
No. 7, 1st quality		-----	1. 50
" 2nd	"	-----	1. 15
No. 8, 1st	"	-----	1. 80
No. 9, 1st	"	-----	1. 05
No. 10, 1st	"	-----	. 80
No. 11, 1st	"	-----	. 90
No. 12, manila		-----	. 45
No. 13, 1st quality		-----	. 88
" 2nd	"	-----	. 78
No. 14, 1st	"	-----	. 92
" 2nd	"	-----	. 82

JAS. A. GARY,  
*Postmaster General.*

A true copy.

JOHN A. MERRITT,  
*Third Asst. P. M. General.*

#### EXHIBIT D.

POST OFFICE DEPARTMENT,  
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,  
*Washington, D. C., April 20, 1898.*

MR. JAMES PURCELL,  
*President of The Purcell Envelope Company,*

*Washington, D. C.*

SIR: I send you herewith copy of an order of the Postmaster General, dated to-day, awarding your company the contract for furnishing this department with stamped envelopes during the four years beginning on the 1st day of October next, at the prices stated in the company's proposal received here on the 30th ultimo.

As soon as it can be prepared, a form of contract will be sent to you for formal execution.

Respectfully, yours,

(Signed) JOHN A. MERRITT,  
*Third Assistant Postmaster General.*

## EXHIBIT E.

POST OFFICE DEPARTMENT,  
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,  
*Washington, D. C., April 21, 1898.*

MR. JAMES PURCELL,  
*Prest. Purcell Envelope Co.,*  
*New York, N. Y.*

SIR: I send you herewith contract in quadruplicate, to be entered  
into by your company for the furnishing of stamped envelopes  
42 for this department during the four years beginning on the  
1st day of October next.

Please execute this contract at once and return it to this office.

Respectfully, yours,

(Signed) JOHN A. MERRITT,  
*Third Assistant Postmaster General.*

—  
*Answer.*

Filed August 5, 1898. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

THE PURCELL ENVELOPE COMPANY, COMPLAIN-  
ant,

v.

CHARLES EMORY SMITH, POSTMASTER GENERAL  
of the United States of America. defend-  
ant.

In equity, No. 19592,  
docket No. 45.

The answer of the defendant to the bill of complaint in the above-  
entitled cause:

The said defendant, saving and reserving to himself all and all  
manner of benefit of exception that can or may be taken to the many  
errors, uncertainties, and imperfections in the said bill contained,  
nevertheless, for answer thereunto, or to so much or such parts thereof  
as he is advised that it is necessary and material for him to answer,  
says:

I. He admits the allegations of the first paragraph of the said bill  
to be true.

II. He admits the allegations of the second paragraph of the said  
bill to be true.

III. He admits the allegations of the third paragraph of the said  
bill to be true.

IV. He admits the allegations of the fourth paragraph of the said  
bill to be true.

V. He admits the allegations of the fifth paragraph of the said bill to be true.

VI. He admits the allegations of the sixth paragraph of said bill to be true, and files herewith a copy of the certain contract therein mentioned, the same being marked "Defendant's Exhibit No. 1," and prayed to be taken as part hereof.

VII. He admits the allegations of the seventh paragraph of said bill to be true, except the allegation that the certain contracts therein mentioned were duly accepted without objection by the Postmaster General, as to which he avers the fact to be that the said contracts, after having been executed by the complainant, were transmitted to and received by the Postmaster General, but were never signed by him or anyone for him, and were, in fact, not accepted by the Postmaster General. And further answering this allegation of the said paragraph, the defendant alleges the fact to be that after the passing of the order of the 20th day of April, A. D. 1898, the same  
43 being order No. 149, a copy whereof is annexed to the bill of complaint, marked "Exhibit C," the contract in the said order mentioned was, on, to wit, the 21st day of April, A. D. 1898, in ordinary course, forwarded in quadruplicate to the complainant for execution; but the same was accompanied by a communication of the said 21st day of April, A. D. 1898, from the Third Assistant Postmaster General, in behalf of the Postmaster General, calling upon the complainant for new and distinctive designs for embossed stamps on all the stamped envelopes to be made under the said contract, a copy of the said communication being hereto annexed, marked "Defendant's Exhibit No. 2," and prayed to be taken as a part hereof; to which communication the complainant on, to wit, the 27th day of April, A. D. 1898, replied to the Third Assistant Postmaster General by telegram, promising to submit the required designs, a copy of the said telegram being hereto annexed marked "Defendant's Exhibit No. 3," and being prayed to be taken as part hereof; and on the said last-mentioned day the said Third Assistant Postmaster General addressed and mailed to the complainant (which duly received the same) a further communication informing the complainant that the Postmaster General had not yet signed the contract aforesaid, but was holding the matter in abeyance, and requesting the complainant to suspend all action under the said Third Assistant Postmaster General's letter of said 21st day of April until further orders, a copy of which said last-mentioned communication is also hereto annexed, marked Defendant's "Exhibit No. 4," and prayed to be taken as part hereof.

VIII. He admits that before the making of the award in the eighth paragraph of the said bill mentioned, the then Postmaster General caused an examination and investigation to be made as in the said paragraph alleged, and he admits that the said then Postmaster General was satisfied on such investigation of the fitness and capacity of the complainant to perform said contract, and that on his judgment then formed in the premises the said then Postmaster General made

the award aforesaid; but he does not admit that the complainant at that time had in its possession all suitable and necessary facilities with which properly to commence and carry on the said contract or was able to carry on the same.

IX. He denies that the awarding of the said contract in manner and form as in the bill of complaint set forth constituted a valid and binding contract between the complainant and the United States in the premises or gave the complainant any vested right, as in the ninth paragraph of the said bill alleged, although he is advised and therefore avers that the question whether such contract exists and the complainant has any vested right in the premises is a question of law for the court, to which, accordingly, he submits the same; but he admits that he has succeeded to the office of Postmaster General and that he has set aside and annulled the said contract by an order whereof a copy is hereto attached, marked "Defendant's Exhibit No. 5," the same being prayed to be taken as part hereof, and he alleges the fact to be that he has in conformity to law ordered an advertisement for new proposals for the performance of the work, the subject matter of the said contract, and that it is his intention, unless restrained by this court, to award a new contract in the premises upon the coming in of proposals in obedience to said proposed new advertisement.

44 X. He has no knowledge, except such as is derived from the allegations of the complainant in that behalf in the tenth paragraph of the said bill, what the complainant has or may have done in respect of preparation for the performance of the contract aforesaid, and he calls for strict proof thereof if material to his interest in the premises; but he is advised, and therefor avers, that the allegations of the tenth paragraph in that behalf are immaterial in the premises; but he denies that the complainant is able to perform the said contract, as in the said tenth paragraph alleged, and he is advised that the other allegations of the said paragraph are in respect of matters of law for the decision of this court, to which, accordingly, he submits the same.

XI. Further answering, the defendant says that the proposals for the certain contract in the said bill of complaint mentioned and in response to which the complainant submitted the proposals set forth in the said bill of complaint, and the exhibits thereto were invited by him, the defendant's predecessor, the then Postmaster General of the United States, in conformity with law, and that all the subsequent proceedings had thereupon, as alleged and set forth in the said bill of complaint, were in ordinary course in the discharge of the duties of the Postmaster General of the United States, in respect of procuring stamped envelopes and newspaper wrappers for use by the public, under the postal laws and regulations of the said United States; after the making of the award set forth in the said bill, in ordinary course, the contemplated contract was sent to the complainant, as alleged, with the reservation implied by law in all such cases of the right of the Postmaster General to sign the said contract only

when and after he, the said Postmaster General, had fully investigated all matters involved in the making of the said contract, which fact the complainant well knew, not only generally, but by reason of the said communication of the Third Assistant Postmaster General of the 21st day of April, A. D. 1898, aforesaid, which upon its face shows that the signature by the complainant of the said contract was not intended or expected to be final, but that the said contract was to be held up until after compliance by the complainant with the request contained in said last-mentioned communication, which said request remains to this day uncomplished with; and that the complainant was further informed in the premises by the communication of the said Third Assistant Postmaster General of the 27th day of April, A. D. 1898, aforesaid, which informed the complainant in terms that the whole matter was in abeyance and notified it, the complainant, to suspend all action in the premises until further orders. Thereupon this defendant, in his capacity as Postmaster General of the United States, and in the discharge of his duties as such, further investigated the premises, both as to the financial and business character of the complainant, and as to its capacity, qualification, and ability to carry out the said contract according to the requirements of law and the public service, and as a result of such investigation this defendant decided, as Postmaster General as aforesaid, that the complainant was not a suitable or proper person or body politic to be entrusted with the carrying out of the said contract, and accordingly revoked and cancelled and declared to be null and void the said order No. 149 aforesaid, and recalled and annulled all letters and notices

45 from any officer of the Post Office Department to the complainant in relation thereto, as appears from the defendant's exhibit No. 5 aforesaid.

XII. And further answering, this defendant says that the complainant has not in and by its said bill of complaint made or stated such a case as does or ought to entitle it to the relief thereby prayed, or to any relief in the premises; and, further, that if the complainant be entitled to any relief by reason of the premises in the said bill of complaint set forth, it has a complete and adequate remedy at law in the premises; and the defendant prays the same benefit of the objections in this paragraph set forth as though he had formerly demurred to the said bill of complaint on account thereof.

And now having fully answered, the defendant prays to be hence dismissed with costs.

CH. EMORY SMITH.

HENRY E. DAVIS,

HARRISON J. BARRETT,

*Solicitors for Defendant.*

DISTRICT OF COLUMBIA, ss.:

I, Charles Emory Smith, on oath say that I am the defendant in the above-entitled cause; that I have read the foregoing answer by me subscribed and know the contents thereof; that the statements



therein made of my own knowledge are true, and that those made upon information and belief I believe to be true.

CH. EMORY SMITH.

Subscribed and sworn to before me this 30th day of July, A. D. 1898.

[SEAL.]

THOS. E. ROACH,  
*Notary Public.*

Filed August 5, 1898. J. R. Young, clerk.

DEFENDANT'S EXHIBIT No. 5.

THE PURCELL ENVELOPE CO.	} Equity, No. 19592.
v.	
CHARLES EMORY SMITH, POSTMASTER GENERAL.	

OFFICE OF THE POSTMASTER GENERAL,  
*Washington, D. C., July 22, 1898.*

Post Office Department,  
United States of America.  
ORDER No. 301.

Be it ordered :

That so much of the Postmaster General's order No. 149, bearing date of April 20, 1898, as awarded to the Purcell Envelope Company, of Holyoke, Massachusetts, the contract for furnishing stamped envelopes to the Post Office Department, based upon the bid of said company submitted March 30, 1898, in response to the advertisement of the Postmaster General of February 28, 1898, be, and the same is hereby, revoked and cancelled and declared to be null and void; and that all letters and notices from any officer of the Post Office Department addressed to said company advising it of said award be, and the same are hereby, recalled and annulled.

(Signed) CH. EMORY SMITH,  
*Postmaster General.*

Copy.

Filed August 15, 1898. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

*Decree.*

THE PURCELL ENVELOPE CO.	} No. 19592.
v.	
CH. EMORY SMITH.	

This cause coming on to be heard at this time and having been argued by counsel and considered by the court, it is this 15th day of

August, 1898, by the court ordered, adjudged, and decreed that the motion for an injunction be and the same is denied, and the rule to show cause, heretofore granted, be and the same is hereby discharged, and the complainant having announced that he did not desire to take proof and that the cause might be disposed of finally as upon bill and answer, it is further ordered, adjudged, and decreed that the bill of complaint be and the same is dismissed; from which decree the complainant prays an appeal to the Court of Appeals, which appeal is allowed, and the bond for said appeal is hereby fixed at one hundred dollars.

By the court:

CHAS. C. COLE,  
*Asso. Justice.*

Filed December 31, 1898. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

*Order dismissing appeal.*

THE PURCELL ENVELOPE CO., COMPLAINANT,

v.

CHARLES EMORY SMITH, DEFENDANT.

Equity, No. 19592.

Upon motion of the defendant, it appearing to the court that the appeal taken by the complainant on Aug. 15th, 1898, has not been perfected as required by rules of court, it is this 31st day of December, A. D. 1898, ordered that the said appeal be, and the same is hereby, dismissed.

By the court:

CHAS. C. COLE,  
*Asso. Justice.*

47 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

*District of Columbia, ss:*

I, John R. Young, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing to be true and correct copies of originals filed in equity cause No. 19592, wherein The Purcell Envelope Company is complainant and Charles Emory Smith, Postmaster General of the United States of America, is defendant as the same remain and appear upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at the city of Washington, in said District, this 20th day of April, A. D. 1905.

[SEAL.]

JOHN R. YOUNG, *Clerk.*

48 II. *General traverse.*

## Court of Claims.

THE PURCELL ENVELOPE COMPANY, }  
v. } No. 22855.  
THE UNITED STATES. }

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by rule 34.

49 III. *History of proceedings.*

On April 12, 1911, the argument of the case was begun. On April 13, 1911, the argument was concluded and the case submitted.

On December 4, 1911, the court filed findings of fact and conclusion of law and entered judgment for claimant in the sum of \$185,331.76, with an opinion by Atkinson, J.

On February 23, 1912, the defendants filed a motion to amend the findings of fact and request for findings of fact on question of fact. This motion was ordered to the law calendar.

On the same date the defendants also filed a motion for a new trial. This motion was also ordered to the law calendar.

On April 9, 1912, the claimant filed objections to defendants' proposed amendments to the court's findings of fact.

On the same date the claimant filed objections to defendants' motion for a new trial.

On the same date the claimant filed a motion for new trial. This motion was ordered to the law calendar.

50 On the same date the claimant filed a motion to amend the findings of fact and a request for additional findings of fact. This motion was ordered to the law calendar.

On December 2, 1912, argument on the above motions was begun.

On December 3, 1912, the defendants filed a request for additional findings of fact.

On December 3, 1912, further argument of the motions was had.

On December 4, 1912, the arguments were concluded and the motions were submitted.

On January 6, 1913, the defendants' motion for a new trial was allowed with an opinion by Howry, J.

On December 12, 1913, Arthur Black, Esq., was substituted attorney of record in the place and stead of Frank S. Black, deceased.

51 IV. *Argument and submission of case. (On new trial.)*

On March 30, 1916, the case was argued by Mr. Arthur Black, for the claimant, and continued by Mr. J. Robert Anderson for the defendants.

On March 31, 1916, the argument was continued by Mr. J. Robert Anderson and Mr. William Hitz for the defendants, concluded by Mr. Arthur Black for the claimant, and the case was submitted.

52     *V. Findings of fact, conclusion of law, and opinion of the court. Filed April 14, 1916.*

The case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

Claimant, the Purcell Envelope Co., is, and ever since July 3, 1894, has been a corporation duly formed under the laws of the State of New York, with the objects of manufacturing, stamping, embossing, and printing envelopes and newspaper wrappers. Its principal office was located at Albany, N. Y., and its plant, consisting of 50 ordinary envelope-folding machines, 134 printing presses, and some cutting presses, was located at Holyoke, Mass., in 1894, and has never transacted any business except that which involved its organization, equipment, the leasing of the building which it occupied, the purchase of machinery, and the manufacture of about fifty or sixty million plain stamped envelopes and some newspaper wrappers, the number not shown during a period of several months in 1894, for James Purcell, the then contractor for the manufacture of stamped envelopes and before he contracted with the Morgan-Plimpton Co., of Hartford, Conn., for the manufacture of the envelopes under said contract in the fall of that year. In November, 1894, Mr. Purcell contracted with the Plimpton Manufacturing Co., of Hartford, Conn., and the Morgan Envelope Co., of Springfield, Mass., to furnish the remaining envelopes required by the contract of Purcell, and the fifty or sixty million plain stamped envelopes which had been made by Purcell were thereupon turned over to Mr. Wickham, who made the envelopes on the Wickham machine for the Plimpton Manufacturing Co. and the Morgan Envelope Co. in carrying out the contract. The said fifty or sixty million plain stamped envelopes and newspaper wrappers were made on the ordinary envelope-folding machines and the corner card and stamp printed and embossed thereon by the ordinary platen printing presses.

The capacity of the 50 envelope-folding machines was about 2,000,000 per day of ordinary plain envelopes and the capacity of the printing presses in embossing and printing the stamp and corner card thereon was not quite so much.

53     The envelope-folding machines of said plant were adapted to the making of stamped envelopes, but by altering the folders could be used for the manufacture of envelopes of commercial size, which vary slightly in size and form from the stamped envelopes.

From 1876 to 1898 the stamped envelopes and newspaper wrappers were made in a plant located at Hartford, Conn., equipped with the Wickham stamped envelope machine, which made the envelope en-

tire, including the printing and embossing of the stamp and the printing of the corner card thereon in one operation, and said Hartford plant was at that time the only plant in the United States equipped with such machines.

## II.

On or about February 28, 1898, the Postmaster General (acting for the United States) duly issued and published an advertisement, a true copy of which is as follows:

*Proposals for furnishing stamped envelopes and newspaper wrappers.*

POST OFFICE DEPARTMENT,  
Washington, D. C., Feb. 28, 1898.

Sealed proposals are invited and will be received at this department until 12 m. on Wednesday, the 30th of March, 1898, for furnishing stamped envelopes and newspaper wrappers in such quantities as may be called for by the department during a period of four years, beginning on the first day of October, 1898. Proposals must be made on the blank forms provided by the department, securely enveloped and sealed, indorsed "Proposals for furnishing stamped envelopes and newspaper wrappers," and addressed to the Third Assistant Postmaster General, Washington, D. C. Bids delivered in person must be handed in at or before the hour above specified for the receipt thereof; otherwise they will not be considered.

Blank forms of proposal, with full specifications and samples of the envelopes and wrappers, will be furnished upon application to the Third Assistant Postmaster General.

JAMES A. GARY,  
Postmaster General.

## III.

On or about the 30th day of March, 1898, claimant made and submitted its proposal in response to said advertisement on the blank form and in the manner therein specified, and which, together with ten other proposals, was duly received and opened at the Post Office Department on the 30th day of March, 1898.

A true copy of claimant's proposal is as follows:

*Proposals for stamped envelopes and newspaper wrappers.*

The undersigned, the Purcell Envelope Co., doing business as envelope manufacturers, in the city of Holyoke, Mass., hereby submit to the Post Office Department, in conformity to an advertisement dated February 28, 1898, and to the specifications referred to therein, a printed copy of which advertisement and specifications is hereto attached and made part hereof, the following

proposal for furnishing all the stamped envelopes and newspaper wrappers of the several sizes and qualities called for by said specifications, and samples of which are also hereto attached and made part hereof, at the following prices, namely:

	Description of envelopes and wrappers.	Quality.	Color.	Size (inches).	Proposal No. 1. Price per thousand for envelopes made of paper according to department's formulas.	
					Dolls.	Cts.
1	Note size, gummed.	First.	White only.	2½ by 5½		65
2	Full letter size, gummed.	First.	White or amber.	3½ by 5½		71
2	Full letter size, gummed.	Second.	White or amber.	3½ by 5½		60
3	Commercial size, gummed.	First.	White or amber.	3½ by 5½		75
3	Commercial size, gummed.	Second.	White or amber.	3½ by 5½		60
4	Trade size, gummed.	First.	White or amber.	3½ by 5½		85
5	Extra letter size, gummed.	First.	White or amber.	3½ by 6½		78
5	Extra letter size, gummed.	Second.	White or amber.	3½ by 6½		70
6	1½ letter size, ungummed (for inserting circulars).		Plain manila.	3½ by 6½		55
7	Official size, gummed.	First.	White or amber.	3½ by 8½	1	50
7	Official size, gummed.	Second.	White or amber.	3½ by 8½	1	15
8	Large official size, gummed.	First.	White or amber.	4½ by 9½	1	80
9	Extra large official size, gummed.	First.	White or amber.	4½ by 10½	1	95
10	Small baronial size, gummed.	First.	White only.	3½ by 4½		80
11	Large baronial size, gummed.	First.	White only.	4½ by 5½		90
12	Newspaper wrappers, gummed.		Plain manila.	5½ by 10½		45
13	Legal size, gummed.	First.	White or amber.	3½ by 6½		88
13	Legal size, gummed.	Second.	White or amber.	3½ by 6½		78
14	Extra legal size, gummed.	First.	White or amber.	3½ by 6½		92
14	Extra legal size, gummed.	Second.	White or amber.	3½ by 6½		82

In the event of the acceptance of the foregoing bid, the said The Purcell Envelope Co. agrees, within ten days from the date of such acceptance, to enter into contract according to the terms, conditions, and requirements of the advertisement and specifications aforesaid; in which contract the contractor and its sureties shall covenant and agree that in case the said contractor shall fail to do or perform all or any of the covenants, stipulations, and agreements of said contract on the part of the said contractor to be performed, as therein set forth, the said contractor and its sureties shall forfeit and pay to the United States of America the sum of two hundred thousand dollars, for which said forfeiture the said contractor and its sureties shall be jointly and severally liable as fixed and settled damages, and not as a penalty to be reduced or diminished, to be sued for in the name of the United States.

(Signature of the bidder.)

THE PURCELL ENVELOPE CO.,  
(Signed) By JAMES PURCELL, *President*.

*Guaranty.*

We, the Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland, having its principal office at the city of Baltimore, in said State, for value received, guarantee and bind ourselves and each of us, our and each of our heirs, executors, and administrators, in the event that a contract for furnishing stamped

55 envelopes and newspaper wrappers, according to the advertisement and specifications of February 28, 1898, shall be awarded to The Purcell Envelope Co.; that it, the said The Purcell Envelope Co., will, within the time limited by the specifications, enter into and duly execute, as required by the said specifications, a contract accordingly, and this guaranty is based upon and governed by the said specifications as to its scope and extent; and in case of failure of the said The Purcell Envelope Co. to enter into contract as above, that we will forfeit and pay to the United States the sum of twenty-five thousand dollars, for which sum we will be jointly and severally liable as fixed and settled damages, and not as a penalty to be reduced or diminished.

Dated New York City, March —, 1898.

(Signatures of guarantors.)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

(Seal of F. and D. Co. of Md.)

By HENRY B. PLATT, *Vice President*.

Attest:

JOHN W. WOOTEN, *Attorney*.

*Certificate.*

The undersigned U. S. district attorney, in the State of New York, certifies, under his oath of office, that he is acquainted with the above guarantor, and knows it to be a surety corporation and able to make good their guaranty.

Dated New York City, March 25th, 1898.

(Signed)

HENRY L. BURNETT,

*U. S. Atty.*

At a meeting of the directors of the Purcell Envelope Co., a corporation organized under the laws of the State of New York, a majority of the directors being present, it was unanimously voted that the president, James Purcell, is hereby authorized and instructed to sign in behalf of the corporation a proposal for supplying the U. S. Government with stamped envelopes and newspaper wrappers as per advertisement of the Post Office Department dated Washington, D. C., Feby. 28, 1898.

(Signed)

HENRY O'BRIEN,

*Secretary of the Purcell Envelope Co.*

COUNTY AND STATE OF NEW YORK, ss:

On the 25th day of March, in the year 1898, before me personally came Henry B. Platt, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he was the vice president of the Fidelity and Deposit Company of Maryland, the corporation named in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that



he signed his name thereto by like order. And the said Henry B. Platt further said that he was acquainted with John W. Wooten and knew him to be the attorney of said company; that the signature of the said John W. Wooten subscribed to the said instrument was in the genuine handwriting of the said John W. Wooten, and was thereto subscribed by the like order of the said board of directors and in the presence of him the said Henry B. Platt.

(Signed) J. WHITMORE BARRY,  
(Notarial seal.) Notary Public, New York County.

At a regular meeting of the board of directors of the Fidelity and Deposit Company of Maryland, held at the office of the company in the city of Baltimore, State of Maryland, on the 5th day of May, 1897, at which was present a quorum of said directors duly authorized to act in the premises, on motion it was unanimously—

*Resolved*, That in pursuance of section eight hundred and eleven (811) of the Code of Civil Procedure of the State of New York, Henry B. Platt, vice president, or John W. Wooten, attorney, or Frank H. Platt, Theodore F. Wood, Edward T. Platt, and Cyrus S. Sedgwick, attorneys in fact of this company in the State of New York, be, and each of them is, hereby authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of this company, and to attach thereto the seal of the corporation, the same to be attested by the said John W. Wooten, attorney of the company, or by either one of the other persons above named, as occasion may require."

COUNTY AND STATE OF NEW YORK, ss.:

I, John W. Wooten, attorney for the Fidelity and Deposit Company of Maryland, have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution. Given under my hand and seal of the company at the city of New York this 25th day of March, 1898.

(Signed) JOHN W. WOOTEN,  
Attorney.

(Seal of Fidelity and Deposit Company of Maryland.)

*Fidelity and Deposit Company of Maryland—Statement, December 31, 1897.*

RESOURCES.				LIABILITIES.			
.	.	.	.	.	.	.	.
<hr/>				<hr/>			
\$2,500,524.33				\$2,500,524.33			

COUNTY AND STATE OF NEW YORK, ss.:

John W. Wooten, being duly sworn, says that he is the attorney of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of

said company as of December 31st, 1897, to the best of his knowledge and belief, and that the financial condition of said company is as favorable now as it was when such statement was made.

(Signed) JOHN W. WOOTEN.

Subscribed and sworn to before me this 25th day of March, 1898.

(Signed) J. WHITMORE BARRY,  
*Notary Public, New York County.*

(Notarial seal.)

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#### IV.

On the 20th day of April, 1898, the Postmaster General (then the Hon. James A. Gary) made and entered an order as follows:

Order No. 149.

OFFICE OF THE POSTMASTER GENERAL,  
*Washington, D. C., April 20, 1898.*

It is hereby ordered:

1st. That all the bids for furnishing stamped envelopes presented to this department on the 30th ultimo under the advertisement and specifications of February 28, 1898, which involve the use of paper different from that described in the specifications as the Government standard, be rejected.

2nd. That the contract for furnishing the envelopes called for by the advertisement and specifications referred to be awarded to the Purcell Envelope Co., of Holyoke, Mass., as the lowest bidder for the Government standard of paper, at the following prices a thousand, namely:

No. 1, first quality	-----	\$0. 65
No. 2, first quality	-----	. 73
No. 2, second quality	-----	. 60
No. 3, first quality	-----	. 75
No. 3, second quality	-----	. 60
No. 4, first quality	-----	. 85
No. 5, first quality	-----	. 78
No. 5, second quality	-----	. 70
No. 6, manila	-----	. 55
No. 7, first quality	-----	1. 50
No. 7, second quality	-----	1. 15
No. 8, first quality	-----	1. 80
No. 9, first quality	-----	1. 95
No. 10, first quality	-----	. 80
No. 11, first quality	-----	. 90
No. 12, manila	-----	. 45
No. 13, first quality	-----	. 88
No. 13, second quality	-----	. 78
No. 14, first quality	-----	. 92
No. 14, second quality	-----	. 82

(Signed) JAMES A. GARY,  
*Postmaster General.*

Before issuing the foregoing order Postmaster General Gary instituted an investigation through one of his proper officers into the business and financial standing of the claimant, and the report thereunder was favorable to said claimant.

## V.

On April 20, 1898, the Third Assistant Postmaster General addressed a letter to James Purcell, claimant's president, as follows:

POST OFFICE DEPARTMENT,  
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,  
*Washington, D. C., April 20, 1898.*

MR. JAMES PURCELL,  
*President of the Purcell Envelope Co., Washington, D. C.*

SIR: I send you herewith copy of an order of the Postmaster General, dated to-day, awarding your company the contract  
58 for furnishing this department with stamped envelopes during the four years beginning on the 1st of October next, at the prices stated in the company's proposal received here on the 30th ultimo.

As soon as it can be prepared, a form of contract will be sent to you for formal execution.

Respectfully, yours,

(Signed) JOHN A. MERRITT,  
*Third Assistant Postmaster General.*

## VI.

On April 21, 1898, the Third Assistant Postmaster General addressed a letter to Mr. James Purcell, president of the Purcell Envelope Co., New York, N. Y., as follows:

POST OFFICE DEPARTMENT,  
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,  
*Washington, D. C., April 21, 1898.*

MR. JAMES PURCELL,  
*Prest. Purcell Envelope Co., New York, N. Y.*

SIR: I send you herewith contract in quadruplicate, to be entered into by your company for the furnishing of stamped envelopes for this department during the four years beginning on the 1st day of October next.

Please execute this contract at once, and return it to this office.

Respectfully, yours,

(Signed) JOHN A. MERRITT,  
*Third Assistant Postmaster General.*

## VII.

On the 21st day of April, 1898, the Third Assistant Postmaster General addressed a letter to Mr. James Purcell, president of the Purcell Envelope Co., Valatie, N. Y., as follows:

POST OFFICE DEPARTMENT,  
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,  
*Washington, D. C., April 21, 1898.*

MR. JAMES PURCELL,  
*Pres. Purcell Envelope Co., Valatie, N. Y.*

SIR: The department desires to have new and distinctive designs of embossed stamps on all the envelopes to be made under the contract just awarded to your company—the heads of the personages represented and the colors to be the same as those on the adhesive stamps of like denominations. These denominations for the present will be the one, two, four, and five cent, the colors and heads being as follows:

- 1-cent, green, head of Franklin.
- 2-cent, carmine, head of Washington.
- 4-cent, light brown, head of Lincoln.
- 5-cent, dark blue, head of Grant.

Please have drawings of the stamps made and submitted to this office without delay.

59 Let me know when and with whom you propose to make your arrangements for securing supplies of paper.

The watermark, by the way, may be substantially what it now is, with the substitution of the figures 98 for 94.

Respectfully, yours,

(Signed) JOHN A. MERRITT,  
*Third Assistant Postmaster General.*

The drawings mentioned in the above letter were not submitted to the Post Office Department or the office of the Third Assistant Postmaster General.

### VIII.

Claimant received said letter (Finding VI) with form of contract in New York, April 22, 1898, and on the same day returned to the Third Assistant Postmaster General said form of contract with the signature of the Purcell Envelope Co., by its president, James Purcell, and its surety, the Fidelity & Deposit Co. of Maryland, by its vice president.

The contract and specifications are printed as a part of the amended petition, to which reference is made.

The contract was not signed by the Postmaster General, or by any officer on behalf of the United States.

### IX.

On April 27, 1898, the claimant telegraphed as follows:

VALATIE, N. Y., *April 27, 1898.*  
Hon. JOHN A. MERRITT,  
*Washington.*

Replying to yours of the 21st instant relative to details under contract awarded us by Post Office Department, April 20, would say

writer went to Boston, Monday, and arranged for drawings, etc. We have contracted for our white and amber paper for term of contract, and are negotiating for the manila. Just as soon as our arrangements are all completed will submit them to you.

(Signed) THE PURCELL ENVELOPE CO.

On the same day the Third Assistant Postmaster General wrote claimant the following letter:

POST OFFICE DEPARTMENT,  
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,  
Washington, D. C., April 27, 1898.

MR. JAMES PURCELL,

*President Purcell Envelope Co., Valatie, N. Y.*

SIR: Your telegram of to-day is before me. As the Postmaster General has not yet signed the contract awarded by the department to your company for furnishing stamped envelopes during the coming four years, but is holding the matter in abeyance, I have to request that you suspend all action under my letter of the 21st instant until further orders.

Respectfully, yours,

(Signed) JOHN A. MERRITT,  
*Third Assistant Postmaster General.*

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X.

On April 15, 1898, the Norman Paper Co., by Frederick H. Newton, secretary and manager, wrote the Third Assistant Postmaster General as follows:

"SIR: Confirming my conversation with the Postmaster General, and in further reply to your verbal inquiry, I have the honor to inform you that the Norman Paper Co., of Holyoke, Mass., has this day entered into an agreement with the Purcell Envelope Co. to supply them with all the paper required to make the stamped envelopes under the specifications attached to the bid of the Purcell Envelope Co., in the event of the award being made them.

"Under this agreement the Norman Paper Co. will indemnify the Purcell Envelope Co., with Moses Newton, John C. Newton, Daniel H. Newton, and James H. Newton, all of Holyoke, Mass., sureties, that they will furnish all the paper required, and for any additional time that the contract may be extended."

No contract was entered into or made prior to the award. After the award the claimant and the said Norman Paper Co. entered into an oral contract whereby the said company was to supply claimant with all of the white and amber paper required to make the stamped envelopes under the said specifications during the term of claimant's said contract at 5½ cents per pound for first quality and 4½ cents per pound for second quality upon the basis of air-dried paper, which the Norman Paper Co. expected the Government would accept as a

compliance with the specification. It was not then equipped for making loft-dried paper, but was financially able to acquire the necessary facilities therefor.

### XI.

Claimant, contemplating making the envelopes under its said contract on the Wickham envelope machines, entered into negotiations with Horace J. Wickham whereby he promised to furnish claimant with a sufficient number of said machines on which to perform said (envelope) contract, and to have some of them ready before the beginning of the contract term, October 1, 1898.

### XII.

Claimant was ready and willing at all times to fully perform and to make and deliver the stamped envelopes and newspaper wrapper according to the terms of said alleged contract. The Postmaster General, the defendants, or any department or officer of the Government never made any call or request upon claimant to furnish or deliver any of said envelopes or wrappers to him, or to any or either of them during the term of the contract, and claimant's said plant, kept intact ready for the performance of the contract hereinafter mentioned, remained idle during that period. Claimant's plant or factory was equipped with Gordon presses and not with the latest machinery for making envelopes, known as the Wickham Envelope Machines. Said presses would entail a greater loss of material and more time than would be required by the Wickham machine process.

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### XIII.

Claimant is sole owner of the claim which is the subject of this action, no assignment or transfer of said claim, or of any part of it, or of any interest therein, having been made.

### XIV.

The following order was addressed to and received by the claimant company:

Order No. 301.

OFFICE OF THE POSTMASTER GENERAL,

*Washington, D. C., July 22, 1898.*

Be it ordered:

That so much of Postmaster General's Order No. 149, bearing date April 20, 1898, as awarded to the Purcell Envelope Company, of Holyoke, Massachusetts, the contract for furnishing stamped envelopes to the Post Office Department, based upon the bid of said company submitted March 30, 1898, in response to the advertisement of the Postmaster General of date February 28, 1898, be and the same is hereby revoked and canceled and declared to be null and void;

and that all letters and notices from any officer of the Post Office Department addressed to said company, advising it of said award, be and the same are hereby recalled and annulled.

(Signed) CH. EMORY SMITH,  
Postmaster General.

Before issuing the foregoing order Postmaster General Smith instituted an investigation through one of his proper officers into the business and financial standing of the claimant, and the report thereunder was unfavorable to the said claimant.

## XV.

On or about July 22, 1898, claimant having received information that the Postmaster General designed readvertising for proposals (to furnish the stamped envelopes), and refusing to sign claimant's contract, filed its bill of complaint in the Supreme Court of the District of Columbia for an injunction, praying that the Postmaster General be enjoined and restrained from setting aside, annulling, or refusing to perform said contract, or permitting or authorizing anyone other than the claimant to furnish said envelopes and wrappers or from entering into any contract with any other person or corporation therefor, or from doing any act or thing to interfere with or in way hinder the performance of said contract by claimant; and said cause coming on to be heard on the bill of complaint and answer of the Postmaster General was dismissed on or about August 15, 1898.

True copies of said bill of complaint, answer, decree of dismissal, and order dismissing appeal are filed a exhibits to the amended petition.

## XVI.

On July 22, 1898, the Plimpton Manufacturing Co. made an offer, in writing, to the Postmaster General as follows:

WASHINGTON, D. C., *July 22, 1898.*

The honorable the POSTMASTER GENERAL.

SIR: The undersigned, acting as attorney in fact, and upon the authority provided by the directors of the Plimpton Manufacturing Company, of Hartford, Conn., and also by the directors of the Morgan Envelope Company, of Springfield, Mass. (the transcripts of the action of said directors being filed herewith), offers to supply the Post Office Department upon an emergency contract with all the stamped envelopes and newspaper wrappers which may be required by it between the 1st day of October, 1898, and the 1st day of January, 1899, in accordance with the specifications as to kinds and qualities set out in the advertisement of the Postmaster General, of date February 28, 1894 (the same being the kinds and qualities included in the existing contract for furnishing stamped envelopes and newspaper wrappers between the Postmaster



General and James Purcell), at the following prices per thousand, to wit:

For No. 1, first quality.....	\$0.65
For No. 2, first quality.....	.73
For No. 2, second quality.....	.60
For No. 2, third quality.....	.47
For No. 3, first quality.....	.75
For No. 3, second quality.....	.60
For No. 3, third quality.....	.48
For No. 4, first quality.....	.85
For No. 5, first quality.....	.78
For No. 5, second quality.....	.70
For No. 5, third quality.....	.56
For No. 6, circular.....	.55
For No. 7, first quality.....	1.50
For No. 7, second quality.....	1.15
For No. 8, first quality.....	1.80
For No. 9, first quality.....	1.95
For No. 10, first quality.....	.80
For No. 11, first quality.....	.90
For No. 12, news wrappers.....	.45
For No. 13, first quality.....	.88
For No. 13, second quality.....	.78
For No. 14, first quality.....	.92
For No. 14, second quality.....	.82

You may elect to take this proposal with your acceptance thereof as a contract for the guidance of the said companies in fulfilling the terms of the contract, or include the prices named herein in a more formal contract, with such terms and conditions as to you may seem proper.

Very respectfully,

(Signed) PLIMPTON MANUFACTURING COMPANY,  
By MARO S. CHAPMAN, *Atty. in Fact.*  
MORGAN ENVELOPE COMPANY,  
(Signed) By MARO S. CHAPMAN, *Atty. in Fact.*

(Report of Third Assistant Postmaster General for the year ending June 30, 1898.)

On July 26, 1898, the Postmaster General entered an order accepting the offer above made by the Plimpton Manufacturing Co. as follows:

JULY 26, 1898.

"Order No. 308.

"Ordered, that the offer in writing, bearing date of July 22, 1898, by the Plimpton Manufacturing Company, of Hartford, Conn., and the Morgan Envelope Company, of Springfield, Mass., to furnish all the stamped envelopes and newspaper wrappers which may be required by the Post Office Department between October 1, 1898, and January 1, 1899, at the prices named below, be and the same is hereby accepted under the provisions of section 3709,

Revised Statutes, relating to the authority of any department of the Government in case of public exigency, to procure supplies by open purchase or contract, which said exigency will arise by reason of the fact that the existing contract for the furnishing of said envelopes and newspaper wrappers will expire by limitation September 30, 1898; the envelopes and newspaper wrappers to be furnished under the offer aforesaid to conform, as to kinds and qualities, to the specifications set out in the advertisement of the Postmaster General for proposals to furnish stamped envelopes and newspaper wrappers, of date February 28, 1894, and included also in the terms and conditions of the existing contract aforesaid for supplies of this character, at the following prices per thousand, to wit:—

(The prices for the various sized envelopes in this order are the same as the prices given in the above proposal and are therefore omitted.)

The contract and specifications mentioned as in the advertisement of February 28, 1894, require that the stamped envelopes of the first quality be made from loft-dried paper.

## XVII.

On October 25, 1898, the Postmaster General entered into a written contract with said company to furnish all the stamped envelopes and newspaper wrappers that the department might call for during the four years beginning on the 1st day of January, 1899.

True copies of parts of said contract in relation thereto are as follows:

*“Contract for furnishing stamped envelopes and newspaper wrappers during the four years beginning January 1, 1899, dated October 25, 1898.*

“ \* \* \* Second. That the paper from which the first quality of envelopes numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, and 14 are to be manufactured must be made specially for the purpose, of the best grades of white linen and of white domestic cotton rags, in the proportion of 35 per cent of linen and 65 per cent of cotton, excluding all other materials except the necessary chemicals, and it must weigh not less than 50 pounds a ream of 500 sheets, measuring 22½ by 30 inches or in that proportion. It must be sized by being run through a tub of animal sizing, and must be loft-dried.

“That the paper from which the second quality of envelopes 2, 3, 5, 7, 13, and 14 are to be manufactured shall be made specially for the purpose, of 75 per cent of what are known as ‘No. 2 country rags,’ composed of about one-half soiled whites and one-half blues (except that other rags of an equivalent character and quality may be used instead after having been approved, in writing, by the Postmaster General), and 25 per cent best quality of bleached sulphite pulp, excluding all other material except the necessary chemicals, and it shall weigh not less than 40 pounds a ream of 500 sheets, meas-

uring 22½ by 30 inches or in that proportion. It shall be sized by being run through a tub of animal sizing, and must be loft-dried. \* \* \*

"And the United States of America, party of the first part, hereby contracts and agrees:

"First. To pay the said contractors for the stamped envelopes and newspaper wrappers accepted and delivered in pursuance of this contract, subject to the reservation hereinafter stated, at the following rates, which shall be full compensation for everything required to be done or furnished, as herein set forth—payments to be made monthly after proper examination and verification of accounts:

"For No. 1 envelopes, first quality, white only, 2½ by 5½ inches, sixty cents a thousand.

"For No. 2 envelopes, first quality, white or amber, 3¼ by 5½ inches, sixty-three cents a thousand.

"For No. 2 envelopes, second quality, buff or blue, 3¼ by 5½ inches, fifty-two cents a thousand.

"For No. 3 envelopes, first quality, white or amber, 3¾ by 5½ inches, sixty-eight cents a thousand.

"For No. 3 envelopes, second quality, buff or blue, 3¾ by 5½ inches, fifty-six cents a thousand.

"For No. 4 envelopes, first quality, white or amber, 3½ by 5½ inches, seventy-three cents a thousand.

"For No. 5 envelopes, first quality, white or amber, 3½ by 6⅝ inches, seventy-three cents a thousand.

"For No. 5 envelopes, second quality, buff or blue, 3½ by 6⅝ inches, sixty cents a thousand.

"For No. 6 envelopes, ungummed, plain manila, 3½ by 6⅝ inches, thirty-six cents a thousand.

"For No. 7 envelopes, first quality, white or amber, 3⅞ by 8⅞ inches, ninety-nine cents a thousand.

"For No. 7 envelopes, second quality, buff or blue, 3⅞ by 8⅞ inches, seventy-eight cents a thousand.

"For No. 8 envelopes, first quality, white or amber, 4⅞ by 9½ inches, one dollar and fourteen cents a thousand.

"For No. 9 envelopes, first quality, white or amber, 4¾ by 10½ inches, one dollar and twenty-two cents a thousand.

"For No. 10 envelopes, first quality, white only, 3⅞ by 4½ inches, sixty-one cents a thousand.

"For No. 11 envelopes, first quality, white only, 4¼ by 5¼ inches, seventy-seven cents a thousand.

"For No. 12 newspaper wrappers, plain manila, 5½ by 10½ inches, thirty-five cents a thousand.

"For No. 13 envelopes, first quality, white or amber, 3¾ by 6¾ inches, eighty-two cents a thousand.

"For No. 13 envelopes, second quality, buff or blue, 3¾ by 6¾ inches, sixty-five cents a thousand.

"For No. 14 envelopes, first quality, white or amber,  $3\frac{3}{4}$  by  $6\frac{5}{16}$  inches, seventy-nine cents a thousand.

"For No. 14 envelopes, second quality, buff or blue,  $3\frac{3}{4}$  by  $6\frac{5}{16}$  inches, sixty-four cents a thousand."

(Report of Third Assistant Postmaster General for the year ending June 30, 1898, page 82.)

65 Excerpt from same report, page 14, in evidence:

"Under the emergency contract, the Government's expenditure for stamped envelopes, as compared with the prices of the James Purcell contract, and which would have had to be given if that contract had been extended, will be reduced about \$68,000.

"Under the new four-year contract the reduction will be, counting probable increase of issues, about \$350,000 a year, or for the whole term of the contract \$1,400,000."

### XVIII.

The quantities of envelopes and wrappers called for by the Post Office Department during the four years beginning on the 1st day of October, 1898, and the amounts claimant would have been entitled to receive therefor are as follows:

#### First quality:

No. 1..	1,419,250, at	\$0.65 per thousand.....	\$922.51
2..	30,384,250, at	.73 per thousand.....	22,180.50
3..	193,172,000, at	.75 per thousand.....	144,879.00
4..	39,925,250, at	.85 per thousand.....	28,836.46
5..	1,851,868,500, at	.78 per thousand.....	1,444,457.43
7..	35,480,000, at	1.50 per thousand.....	53,220.00
8..	53,242,750, at	1.80 per thousand.....	95,836.95
9..	25,643,500, at	1.95 per thousand.....	50,004.82
10..	8,097,500, at	.80 per thousand.....	6,478.00
11..	11,357,250, at	.90 per thousand.....	10,221.52
13..	413,750,000, at	.88 per thousand.....	364,095.60
14..	40,530,250, at	.92 per thousand.....	37,287.83

#### Second quality:

No. 2..	2,801,750, at	.60 per thousand.....	1,681.05
3..	15,643,250, at	.60 per thousand.....	9,385.95
5..	69,405,500, at	.70 per thousand.....	48,583.85
7..	7,644,750, at	1.15 per thousand.....	8,791.46
13..	37,001,250, at	.78 per thousand.....	28,860.97
14..	1,901,250, at	.82 per thousand.....	1,559.02

#### Manila:

No. 6..	56,350,000, at	.55 per thousand.....	30,992.50
Newspaper wrappers...	160,624,000, at	.45 per thousand.....	72,280.80

Total.	3,050,237,250.....	2,460,556.22
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### XIX.

The quantity of loft-dried paper necessary for the manufacture of the first quality envelopes would have been 25,811,362 pounds. The quantity of paper necessary for the manufacture of the second quality envelopes would have been 994,100 pounds. The quantity of

manila paper necessary for the manufacture of No. 6 ungummed envelopes and newspaper wrappers would have been 1,237,185 pounds. The quantity of manila paper necessary to band the envelopes in packages as required by the contract and specifications would have been 68,000 pounds. The reasonable cost to the claimant of loft-dried paper necessary for the manufacture of the envelopes and newspaper wrappers would have been as follows, to-wit: For first quality envelopes,  $6\frac{8}{10}$  cents per pound; for second quality envelopes,  $4\frac{1}{2}$  cents per pound; for manila paper No. 6 ungummed envelopes,  $3\frac{1}{2}$  cents per pound; for manila paper to band the envelopes, 3 cents per pound.

The total cost of all paper required in the manufacture of all the envelopes and newspaper wrappers would have been \$1,845,248.60.

## XX.

The total cost to claimant for materials and the manufacture and delivery of stamped envelopes and newspaper wrappers in accordance with the terms of claimant's contract would have been \$2,275,-224.46. Deducting this amount from claimant's contract price of \$2,460,556.22 leaves a difference of \$185,331.76, which represents the profit which the claimant would have made if allowed to perform the work.

## CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entitled to recover judgment against the United States in the sum of one hundred and eighty-five thousand three hundred and thirty-one dollars and seventy-six cents (\$185,331.76).

## OPINION.

ATKINSON, J., delivered the opinion of the court:

This is an action for damages for the breach of an express contract by the defendants. The facts briefly stated are as follows:

On February 28, 1898, the Postmaster General issued and published an advertisement inviting sealed proposals for furnishing stamped envelopes and newspaper wrappers in such quantities as might be called for by the department during the period of four years, beginning the first day of October, 1898. Eleven proposals were submitted, and claimant's being the lowest in the aggregate, according to the department's formulas, was accepted, and on April 20, 1898, it was awarded the contract by James A. Gary, at that time Postmaster General. The next day (April 21) the Third Assistant Postmaster General mailed to claimant a contract in quadruplicate, requesting it to sign, execute, and return the same to the Post Office Department. This the claimant did on the 22d of April (the day following its receipt), and accompanied the same with a bond as required in the

penalty of \$200,000 duly executed by the Fidelity & Deposit Co., of Baltimore, Md., for the faithful performance of the contract. Postmaster General Gary retired from office on the 21st day of April, 1898, without signing said contract, and was on that day succeeded in office by Charles Emory Smith as Postmaster General. On April 27, claimant telegraphed the Post Office Department that it had made arrangements for the necessary drawings and had contracted for the white and amber paper for the term of the contract period. Under date of that same day the Third Assistant Postmaster General replied by saying that the Postmaster General (Charles Emory Smith) had not signed the contract, but was holding the matter in abeyance, and requesting claimant to suspend all action under the department letter of April 21 until further orders. Thereafter, on July 22, 1898, Postmaster General Smith rescinded the order of his predecessor which awarded the contract to claimant, and on the 8th day of August, 1898, new proposals were called for by advertisement of the department, and on October 25, 1898, a new contract was let to the Plimpton Manufacturing Co. and the Morgan Envelope Co. covering the period for which claimant had contracted with the Government to furnish the envelopes and newspaper wrappers for the Post Office Department. The contract price which claimant avers it was to have received was \$2,460,556.22, and the estimated cost of furnishing the same, as made by claimant, was \$1,833,650.57, which indicates an anticipated profit of \$626,905.65, and to recover said amount this suit was instituted.

When claimant learned that the Post Office Department contemplated annulling the award made to it by Postmaster General Gary for the supplying of the envelopes and newspaper wrappers, it brought a suit, in July, 1898, in the Supreme Court of the District of Columbia, to enjoin the department from taking such action (Washington Law Reporter, 1898, 515). The proceedings in said court are filed as an exhibit to claimant's amended petition herein.

One of the questions presented for determination upon which the case must turn is whether the words in the advertisement of February 28, 1898, "sealed proposals are invited and will be received at this [Post Office] department until 12 m. on Wednesday, the 30th of March, 1898, for furnishing stamped envelopes and newspaper wrappers in such quantities as may be called for by the department for the period of four years, beginning on the 1st day of October, 1898" (Finding II), are a sufficient compliance with the statute to authorize a proposal for that service alone by the claimant and acceptance by the Postmaster General. This court has held, except in certain cases of emergency, that all contracts between individuals and the Government are void unless they are made upon advertisements for proposals previously published, and that a compliance with such statutes is a condition precedent upon the performance of which only can a binding contract with the Government be made by its officers. It acts by its public officers, and their powers and duties are prescribed and limited by laws which they must follow.



The defendants maintain that, although the advertisement for proposals was duly and regularly made by the Post Office Department, that claimant was the lowest bidder; that its bid was accepted; that the Postmaster General prepared, or caused to be prepared, a contract which was forwarded to claimant for its signature and acknowledgment; that the contract was duly signed and acknowledged by claimant, and was promptly returned to the Post Office Department with an accompanying bond in the sum of \$200,000, conditioned upon the faithful performance of the contract; yet it is insisted by defendants that it was not a completed and binding contract until it was signed by the Postmaster General. Many authorities are cited to sustain this contention.

Claimant relies mainly upon the case of *Garfield v. United States*, 93 U. S., 242, which in all of its important features is identical with the case at bar; and also upon the decision of the Supreme Court of the District of Columbia, in the case now in hearing, wherein claimant sued out an injunction to compel the Post Office Department to sign the contract herein involved. The court, in its opinion in the injunction proceedings, inter alia, said:

“The defendant resists the granting of the injunction upon the grounds, first, that the complainant had no contract, and, 68 second, that if it had, a court of equity has no jurisdiction to grant an injunction, there being, as he contends, an adequate remedy at law. As to the first ground of objection, it was held by the Supreme Court of the United States in the case of *Garfield v. United States*, 93 U. S., 242, that the awarding of a contract to a party by the Postmaster General pursuant to an advertisement by him and a bid by the person to whom the award was made, constitutes a complete contract as fully as if the formal contract had been reduced to writing and signed by the parties. The grounds for holding that there is a contract in this case are much stronger than in the *Garfield* case. In that case nothing was done after the award by the department, while here the formal contract was furnished under the direction of the Postmaster General and sent to complainant with a request to sign and return it, which was promptly done. Not only this, but on the same day the contract was sent to complainant for its execution, another letter was written and sent it by the department in which instructions were given for the execution of some of the work to be done under the contract, and in express terms acknowledging the contract as existing between the parties at the time. Under these circumstances it is immaterial that the Postmaster General did not or has not signed the contract. On its return to the department, signed by the complainant, it became as binding upon the Government as if it had been signed by the Postmaster General.”

The court, after referring to the jurisdiction of a court of equity, and to the rule that the existence of an adequate remedy at law “is always a conclusive answer to an application for an injunction.” held that, “the only remedy of the complainant for damages for a breach of its contract would be a suit against the United States in the Court



of Claims. \* \* \*. The facts in this regard show that the complainant can be, in contemplation of law, fully compensated in money for any damages it may sustain by a refusal on the part of the Postmaster General to perform the contract, and that such sum can be proved and recovered in the Court of Claims. There is no ground shown, therefore, authorizing the court to enjoin the defendant from violating the contract, and the injunction must be denied."

The Supreme Court decision in the Garfield case, *supra*, contains these words: "The Court of Claims holds that the proposal on the part of Garfield, and the acceptance of the proposal by the department, created a contract of the same force and effect as if a formal contract had been written out and signed by the parties. Many authorities are cited to sustain the proposition. We believe it to be sound, and that it should be so held in the present case." *Id.*, 244.

The following decisions also have a direct bearing upon the case before us: *Adams v. United States*, 1 C. Cls., 192; *McCullom v. United States*, 17 C. Cls., 92; *Schneider v. United States*, 19 C. Cls., 547; *Proffit v. United States*, 42 C. Cls., 248; *Chicago v. Greer*, 76 U. S., 726; *Sanders' case*, 144 N. Y., 209.

The foregoing decisions, and many others along the same line which we do not deem necessary to review, all agree that the principal, if not the sole question involved in a case of this character, is whether there was a meeting of the minds of the parties in interest upon a distinct proposition, manifested by an overt act. If so, a contract was created—was made between the parties to this  
69 suit; if otherwise, no contract was effectuated. Taking together the department's specifications, the advertisement for bids, the awarding of the contract, the preparation of the contract by the defendants, the signing of the same and its delivery by claimant, and the furnishing of the required bond, all show a concurrence of the minds of both of the parties to the contract, which, therefore, render it a contract as binding in law as if it had been signed by the Postmaster General.

It is further contended by counsel for the defendants that the advertisement and specifications required the successful bidder to furnish a bond of \$200,000, which must be satisfactory to and approved by the Postmaster General, and that although such bond was furnished, it does not appear that it was thus approved. The language of the specifications upon this subject is as follows: "In the case of a guarantee company, the Postmaster General must be satisfied of its responsibility." It may be conceded that such satisfaction on the part of the Postmaster General was a necessary condition precedent to the completion of a binding contract. But how was such satisfaction to be manifested? It would seem that it could be made known in no better and more effectual way than by silence upon that subject and refusing to sign the contract on other grounds. Any other interpretation of this provision would be palpably unjust to the contractor whose bid had been accepted, for if the guaranty company was unsatisfactory to the Postmaster General notice of that

fact should be given so a different guaranty company could be offered. But nowhere does it appear that either the character, quality, or sufficiency of the bonding company was ever raised or considered by the Postmaster General or any of his subordinates, or that the contract was canceled for that reason. Hence the presumption necessarily follows that the contract was abrogated for some other reason than the insufficiency of the bond, or that fact would have been made known to the claimant, which was not at any time done. In other words, it is apparent that if there had been any objection to the bond, it would have been mentioned in the order of the Postmaster General dated July 22, 1898, rescinding claimant's contract. Said letter is quoted in full in Findings XIV.

Having decided that the contract, although not formerly signed by the Postmaster General, was legal and binding, it follows that the order of that officer arbitrarily rescinding it was a breach thereof. The following recognized authorities are sufficient to show what constitute breaches of contracts:

"A breach of contract may arise in any one of three ways, namely: By renunciation of liability under the contract, by failure to perform the engagement, or by doing something which renders the performance impossible." 7 A. & E. Ency. of Law, 149, 150; Roehm v. Horst, 178 U. S., 1.

"Where one party to an executory contract prevents the performance of it, or puts it out of his power to perform it, the other party may regard it as terminated and demand whatever damages he has sustained thereby." Lowell v. St. Louis Mut. Life Ins. Co., 111 U. S., 264, 276; Garfield v. United States, 93 U. S., 242.

"It is now a well-settled rule that if a person enters into a contract for services, to commence at a future day, and before that day arrives does an act inconsistent with the continuance of the contract, an action may be immediately brought by the other party." Howard v. Daly, 61 N. Y., 362, on review of the authorities. English and American.

"If one party to a contract has destroyed the subject matter or disabled himself so as to make performance impossible, his act is equivalent to a breach of the contract, although the time for performance has not arrived, and also, if the contract provides for a certain series of acts, and only default is made in the performance of one of them, accompanied by a refusal to perform the rest, the other party may not perform, but treat the refusal as a breach of the entire contract and recover accordingly. The doctrine that there may be an anticipatory breach of an executory contract by an absolute refusal to perform it has become the settled law of England as applied to contracts for services, for marriage, and for the manufacture and sale of goods." Roehm v. Horst, supra.

The findings show that claimant having fulfilled all the requirements of the Post Office Department and being ready and willing to furnish the envelopes and newspaper wrappers provided by the con-

tract, it was, therefore, not within the power of the Postmaster General to revoke it, without showing some failure on the part of claimant, or some just or legal cause for such action. It is well settled that "when the Government enters into a contract with an individual or corporation it divests itself of its sovereign character so far as concerns the particular transaction and takes that of an ordinary citizen; and it has no immunity which permits it to recede from the fulfillment of this obligation." *U. S. v. N. A. C. Co.*, 74 Fed. R., 145, 151; *Southern Pacific Co. v. United States*, 28 C. Cls., 77-105.

"If it [the United States] comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the laws that govern individuals there." *Cooke v. United States*, 91 U. S., 398.

It is not contended that claimant at any time consented to the annulment of the contract, or that the contract contains any provision authorizing the Postmaster General to annul it in the manner it was done. As a matter of fact, no reason whatever was given by that officer for abrogating the same. He did, however, in the equity suit brought by claimant in the Supreme Court of the District of Columbia, *supra*, seek to justify his annulment of the contract on the ground that he had "concluded that the claimant was not a suitable or proper person or body politic to be entrusted with the carrying out of the said contract." The District of Columbia Supreme Court conclusively, and we think correctly, answered this allegation in these appropriate words:

"But there is no stipulation or provision in the contract authorizing the defendant to void or annul it on that ground. The contract does contain stipulations empowering the defendant to abrogate it if the complainant should make certain failures or defaults, or commit certain frauds in the execution thereof, but nothing that can be construed to give him power to annul it because he may have entertained the belief, however well founded, that the complainant is financially or otherwise unable or unfit to perform the work. By the terms of the contract he must wait some actual default or wrong in the performance of it before he has power to revoke it."

71 Such contention by defendants we decide could only be considered prior to the awarding of the contract, and if found to be justifiable would be proper grounds for refusing to award the contract; but if an error was made in letting the contract, neither Postmaster General Gary, who made it, nor his successor, Postmaster General Smith, who rescinded it, possessed the power under the law to arbitrarily annul it.

Inasmuch, therefore, as there was a breach of the contract by the defendants, claimant is entitled to recover damages therefor, the measure of which is the difference between the price fixed in the contract for the envelopes and newspaper wrappers and the cost of furnishing them, "making a reasonable deduction for the less time engaged and for release from the care, trouble, and responsibility

attending a full and complete execution of the contract." *United States v. Speed*, 8 Wall., 77, 84.

The principle involved in the case at bar is clearly and concisely expressed by the Supreme Court in the case of *Philadelphia, W. & B. Co. v. Howard*, 13 How., 512. At page 527 the court said:

"\* \* \* Actual damages clearly include the direct and actual loss which the plaintiff sustains. And in a case of a contract like this that loss is, among other things, the difference between the cost of doing the work and the price to be paid for it. This difference is the inducement and real consideration which causes the contractor to enter into the contract. For this he expends his time, exercises his skill, uses his capital, and assumes the risks which attend the enterprise. And to deprive him of it when the other party has broken a contract and willfully put an end to it would be an injustice. There is no rule of law which requires us to inflict this injustice. Wherever profits are spoken of as the subject of damages, it will be found that something contingent upon future bargains or speculations or status of the market is referred to and not the difference between the agreed price of something and its ascertainable value or cost."

In the case of *United States v. Behan*, 110 U. S., 338, 344, which involved the question of profits under breach of contract similar to the case we are considering, it was decided:

The prima facie measure of damages for the breach of contract is the amount of the loss which the injured party has sustained thereby. If the breach consists in preventing performance of the contract, without fault of the other party, who is willing to perform it, the loss of the latter will consist of two distinct elements or grounds of damage, namely: First, what he has already expended toward performance, less the value of materials on hand; secondly, the profits that he would have realized by performing the whole contract. The second item, profits, can not always be recovered. They may be too remote and speculative in their character, and therefore incapable of that clear and direct proof which the law requires. But when, in the language of Ch. J. Nelson, in the case of *Masterson v. Brooklyn*, 7 Hill, 69, they are the direct and immediate fruits of the contract and they are free from these objections, they are then part and parcel of the contract itself, entering into and constituting a portion of its very elements; something speculated for, the right of the enjoyment of which is just as clear and plain as to the fulfillment of any other stipulation. \* \* \* If he [claimant] goes for profits, then the rule applies as laid down in *Speed's* case, and his profits will be measured by the difference between the cost of doing the work and what he was to receive for it."

In the case before us the contract was awarded by the Postmaster General to claimant; the contract was signed and returned to the Post Office Department by claimant with bond of \$200,000 accompanying it; arrangements were made by claimant to procure the

necessary materials to carry out its contract, and three months and two days after awarding the contract it was annulled by an executive order of the Postmaster General. This renunciation went to the whole of the contract and was absolute and unequivocal, which brings it within the above-quoted authorities, and therefore entitles claimant to reasonable damages in the way of profits under the contract it was prohibited from executing.

From what we have said above, our conclusion is that claimant is entitled to a judgment against the United States for the sum set forth in Finding XX of \$185,331.76, which is accordingly ordered.

Judge Barney and Judge Booth concur.

Chief Justice Campbell dissents.

73 VI. *Judgment of the court.*

At a Court of Claims held in the city of Washington on the 14th day of April, A. D. 1916, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the claimant, the said Purcell Envelope Company, do have and recover of and from the defendants, the United States, the sum of one hundred and eighty-five thousand three hundred and thirty-one dollars and seventy-six cents (\$185,331.76).

BY THE COURT.

27 VII. *History of proceedings after entry of judgment.*

On June 13, 1916, the defendants filed a motion to make findings of fact on questions of fact, to amend findings of fact, and for a new trial on errors both of fact and of law. This motion was overruled by the court on December 18, 1916.

On the 28th day of March, 1917, the defendants, by the Attorney General, filed a motion, which was allowed by the court 74 on April 2, 1917, to incorporate the above motion, filed June 13, 1916, in the record on appeal. Said motion and Exhibit "A" thereto being in words and figures as follows:

#### MOTION.

Comes now the defendant by the Attorney General and moves the court to order that the clerk thereof incorporate into the record, to be certified to the Supreme Court of the United States, "defendant's motion to make findings of fact on questions of fact, to amend findings of fact, and for a new trial on errors both of fact and of law," filed herein on June 13, 1916, and overruled on December 18, 1916, a printed copy of which motion is attached hereto and made a part hereof, marked Exhibit "A."

Defendant represents that it deems the questions of fact which are set forth in Exhibit "A" and numbered I to XXX, inclusive, to be

material and necessary to properly present the issue in this case to the appellate court.

Respectfully submitted.

HUSTON THOMPSON,  
*Assistant Attorney General.*  
J. ROBERT ANDERSON,  
*Attorney.*

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## EXHIBIT "A."

In the Court of Claims of the United States.

THE PURCELL ENVELOPE COMPANY, CLAIMANT,  
v.  
THE UNITED STATES.

No. 22855.

Defendant's motion to make findings of fact on questions of fact, to amend findings of fact, and for a new trial on errors both of fact and of law.

Comes now the defendant by the Attorney General, and moves the court to make findings of fact on questions of fact, to amend findings of fact filed herein April 14, 1916, and for a new trial on errors both of fact and of law.

HUSTON THOMPSON,  
*Assistant Attorney General.*  
J. ROBERT ANDERSON,  
*Attorney.*

76 The court is respectfully requested to make findings of fact on the several questions of fact following, to wit:

## I.

Whether or not, according to the official report made by a proper officer of the Post Office Department during the investigation, referred to in Finding IV of the court, Mr. James Purcell made a statement with regard to the financial condition of the stockholders of the Purcell Envelope Co., and stated that he himself owned real and personal property of the value of \$60,000, not including his interest in the company; that he had reason to believe that Mr. H. E. Townsend (who was claimant's vice president in 1898, p. 182, qq. 10-13) owned \$30,000 or \$40,000, and that Mr. Payn probably owned several hundred thousand dollars, and, if so, whether or not the report containing such information was transmitted to the Hon. James A. Gary, Postmaster General, prior to the award (p. 16, first paragraph under heading "Financial condition of company and its stockholders.")



## II.

Whether or not, on or about April 4, 1898, and prior to the award, the Purcell Envelope Co., by James Purcell, president, sent a written communication to Hon. James A. Gary, Postmaster General, Washington, D. C., in connection with its bid, wherein it was stated, among other things, that the company then had machinery in  
77 place guaranteeing a product of over two and a half million envelopes daily, a quantity far in excess of the demand of the Government; that it now had a magnificent brick factory at Holyoke, Mass., 100 by 60 feet, 6 stories high, and had fully equipped it with printing and embossing presses, envelope-folding and envelope-cutting machines, and every appliance for the manufacture of stamped envelopes; that it had expended nearly \$200,000 on this plant; that the factory was ready to start at any time within 24 hours after notice is received; that it had superior facilities to those under which its present contract was being operated, and courted the fullest investigation as to its financial responsibility; that it was ready to sign the contract and give the required bond, and urged that the award be made to it (pp. 60, 61).

## III.

Whether or not after the award was made, and prior to July 22, 1894, and during the investigation which was instituted by Postmaster General, the Hon. Ch. Emory Smith, to which reference is made in Finding XIV of the court, information was officially transmitted to the Postmaster General to the effect, among other things, that little was known of Mr. Purcell's actual responsibility (p. 29, line 32), that Mr. Townsend had unsatisfied judgments standing against him (p. 29, lines 21, 46), and that his financial standing was not good; that judgments had been entered against Mr. Payn from  
78 time to time (p. 29, line 18); that the firm of which he was a member had practically failed, with assets estimated at \$20,000 and liabilities at \$40,000 (p. 29, lines 35-36); that he was said to be slow of payment and not known to have anything that could be reached (p. 29, lines 17, 18).

## IV.

Whether or not, after the award was made and through the investigation instituted by Postmaster General Smith, referred to in Finding XIV of the court, official information was transmitted to that officer in the form of a report (R., pp. 25-30), which, among other things, stated that the Purcell plant at Holyoke, Mass., had been erected for Purcell by the Powers Paper Co., and that the latter was contingently interested in the success of the Purcell company (p. 26, lines 30-33), and expected to supply the latter with a part of the paper (p. 26, line 33); that a mortgage upon the Purcell plant was held by L. J. Powers (father of F. B. Powers, p. 26, line 29) which



had cost the Powers's interests over \$90,000 (p. 28, last line, first par.); that the Holyoke City Bank of Holyoke, Mass., would not lend Powers or the Purcell Envelope Co. and did not wish to do any business with them (p. 28, lines 26-28); that the bank had some dealings with Purcell and Townsend; that Townsend was not satisfactory (p. 28, lines 25, 26); that the Holyoke Savings Bank would not lend them a dollar (p. 28, line 29); that the Holyoke National Bank never had any dealings with the Purcell Envelope Co., but had looked them up about four years ago before and concluded not to lend them,

79 was of the same opinion still (p. 28, lines 42-44); that the Park Bank of Holyoke had a chance to do business with Messrs. Purcell & Townsend, but did not do it, and would not do it now (p. 28, lines 51-53); that the Chapin Bank and the John Hancock Bank of Springfield, Mass., would not give Purcell or his company accommodation unless the paper bore A1 indorsements (p. 27, lines 43, 44); that at the Second National Bank of Springfield (Mass.) the board would not pass their paper (p. 27, lines 45, 46); that the Springfield National Bank would not give any accommodation unless very satisfactorily indorsed (p. 27, lines 50, 51); that Mr. Purcell's personal check had several times been refused payment because of no funds to his credit (p. 28, lines 1, 2); that Mr. Townsend had an account there, but overdraw it about \$18, and it took two or three months to get it (p. 28, lines 4-6); that in 1896 the general credit of the claimant was not good (p. 29, line 11); that the inspector making the report had heard that two or three of the company's notes had been protested, and there were other rumors concerning its financial standing (p. 27, lines 33-36); that the company consisted of James Purcell, L. F. Payn, H. E. Townsend, and Henry O'Brien, all of whom lived in the State of New York (p. 26, lines 22-26); that four years ago (1894) the Purcell Envelope Co. made envelopes about a month (p. 27, lines 3 and 4); that during that time it contracted with Mr. Powers for 40 envelope machines; that it accepted and paid for 10; that this was the machinery alleged to have been recently bought (p. 27, first par.); that the

80 Morgan-Plimpton Co. assumed the contract for the other 30 machines, and that the contract was assigned to the latter company by Mr. Purcell; that the Morgan-Plimpton Co. stated that they would hold Powers to that contract, and that he would be compelled to deliver the 30 machines to them before he could make any more for Mr. Purcell (p. 27, pars. 1 and 2); that the Morgan-Plimpton plant was as nearly perfect as it was possible for human ingenuity and business common sense to construct (p. 26, lines 1 and 2), and could turn out nearly, if not quite, 4,000,000 envelopes for each working day (p. 26, lines 17-20).

## V.

Whether or not after the award was made, and prior to the date of the order set out in Finding XIV, there was transmitted to the Postmaster General official information in the form of a report made

by the proper officers of the Post Office Department, as a result of the investigation mentioned in said finding, to which report was attached, as Exhibit A, an affidavit (p. 30, line 39, and pp. 30, 31) purporting to have been made by Clarence Wolf, wherein it was stated, among other things, that the affiant had been engaged for twenty years in the manufacture of envelopes (p. 30, third line from bottom of page); that on May 28, 1898, he had made a personal examination of the plant of the Purcell Envelope Co., at Holyoke, Mass. (p. 30, last 2 lines), which was an ordinary commercial plant, not up to present standard in efficiency; that the plant was idle (p. 31, lines 1, 3); that among the machines contained therein, 22 were in fair condition and 5 in poor condition (p. 31, line 6); that the affiant found no facilities for making newspaper wrappers (p. 31, lines 7, 8); that he believed the Gordon presses could emboss and print 10,000 each (envelopes) in a day of 10 hours (p. 31, lines 11, 12); that he did not believe the Purcell plant, as then constituted, capable of executing the contract for printing stamped envelopes should the same be awarded to that company (p. 31, lines 27, 29).

## VI.

Whether or not after the award was made, and prior to the date of the order set out in finding XIV of the court, there was transmitted to the Postmaster General an official report made by the proper officers of the Post Office Department, as a result of the investigation mentioned in said finding, to which was attached, as Exhibit B, an affidavit (pp. 31-32) purporting to have been made by Joseph F. Roberts, wherein it was stated, among other things, that the affiant was by trade a machinist and an adjuster of envelope machines, and on May 28, 1898, he made a personal examination of the plant of the Purcell Envelope Co., of Holyoke, Mass.; that among other machines found therein there were 10 Leader machines in fair condition, 14 Berlin and Jones machines not in good condition, but could be put in good condition in a month, if enough help was employed; that there were 11 Standard (Piper) machines in fair condition, and 5 Ermold machines in fair condition; that affiant estimated that the Gordon presses could each print and emboss 12,000 envelopes in a day of 10 hours.

## VII.

Whether or not in a letter of (Senator) O. H. Platt, to Chas. Emory Smith, Postmaster General, Washington, D. C., dated April 25, 1898, it was stated:

"I hope you will not sign this contract (which had been awarded to the Purcell Envelope Co. by Postmaster General Gary on Apr. 20, 1898) until you have an opportunity to fully investigate it, both from a business standpoint and as to the influences which have been used

to secure it, and that you will, at an early date, give an interview to the parties whom it was decided against (p. 20)."

### VIII.

Whether or not, in a letter to Plimpton & Morgan Companies, by M. S. Chapman, attorney, to Chas. Emory Smith, Postmaster General, dated May 6, 1898, it was stated:

"That the stamped-envelope contract—bids for which were opened March 30, 1898—was positively and legally awarded to us, and that the subsequent award to the Purcell Envelope Co. was not a just or legal award (p. 22)."

### IX.

Whether or not on May 6, 1898, Jas. T. Abbe, president, wrote to the honorable the Postmaster General a letter of that date, 83 wherein, among other things, it was stated that the Holyoke Envelope Co., which had submitted a bid for furnishing stamped envelopes and newspaper wrappers to the Post Office Department in response to its advertisement, dated February 28, 1898, the writer had reason to believe that bidders were not treated fairly; that the Holyoke Envelope Co. "was treated \* \* \* with inexcusable unfairness in the Third Assistant Postmaster General's Office" (p. 21).

### X.

Whether or not, subsequent to the award, according to statements contained in the report of an officer of the Post Office Department, during the investigation, mentioned in Finding XIV of the court, Mr. Jas. Purcell participated by submitting to that officer certain papers which were attached to the officer's report as Exhibits "C, D, E, F, G, H, I, J, K, L, M, N, O, and P" (p. 39); and also whether or not Mr. Purcell acquiesced in such investigation being made (p. 27, lines 39 and 40; p. 30, lines 23-26 and 38-40).

### XI.

Whether or not, subsequent to April 21, 1898, and prior to the revocation of the award by the Postmaster General on July 22, 1898, the claimant informed the Post Office Department, as requested in the letter set out in Finding VII, when and with whom it proposed to make its arrangements for securing supplies of paper, and, if it did so inform the department, what such information was and when was it given.

84

### XII.

1. Whether or not the Powers Company was contingently interested in the success of the Purcell Envelope Co. (p. 1719, qq. 270-271).

2. Whether or not the Connecticut River Paper Co. had erected the building (claimant's plant) for the Purcell Envelope Co. (pp.

1719-1720, qq. 273-274), and if the latter got the contract hoped and expected to furnish loft-dried paper at 8 c. per lb. (p. 1720, qq. 275, 276, 280), and also to make the machines for making the envelopes, because the Connecticut River Paper Co. had been engaged with the Purcell Envelope Co. in carrying out the contract in 1894 (p. 1720, q. 276).

3. Whether or not Mr. F. B. Powers personally interviewed Postmaster General Gary and solicited that officer to award the contract to the Purcell Envelope Co. (p. 1721, qq. 286-290).

4. Whether or not the Connecticut River Paper Co. was a corporation of which Mr. F. B. Powers and his three brothers were directors, and of which the father of the said F. B. Powers was the principal stockholder, president, and treasurer; and whether the said paper company was comparatively a small concern (p. 1736, q. 533); and whether or not the rest of the Powers family other than F. B. Powers knew anything about the mechanical end of the business (p. 1724, qq. 345-348; p. 1736, xq. 530).

5. Whether or not Mr. F. B. Powers was a director in the Connecticut River Paper Co. and interested in all Government contracts, not only this (the contract in question), but other (p. 1720, q. 277; p. 1724, xq. 345).

85

## XIII.

Whether or not the Norman Paper Co. ever indemnified the Purcell Envelope Co. with sureties that the former would furnish all the paper required, and as stated in its letter, dated April 15, 1898, set out in Finding X of the court.

## XIV.

Whether or not the Norman Paper Co. ever equipped its plant with the necessary facilities or acquired the necessary facilities for making loft-dried paper, in accordance with the Government's formula therefor (p. 99, 101, q. 96; qq. 124, 126, 127).

## XV.

Whether or not the Norman Paper Co. combined with the American Writing Paper Co. in 1899 and 1900 (p. 102, q. 137).

## XVI.

1. Whether or not the Postmaster General, prior to the revocation of the award on July 22, 1898, became satisfied that paper made by some process of air drying would produce equally good results as paper made by the loft-dried drying process.

2. Whether or not the Postmaster General at any time selected paper made by some process of air drying as being in compliance with the specifications.

3. Whether or not prior to the making, entering, and notifying the claimant of order No. 301, dated July 22, 1898 (p. 65), the Postmaster General had authorized the claimant to furnish first-quality envelopes manufactured from paper made by the air-drying process.

86 The defendant moves the court to amend the last paragraph of Finding X of the court to read as follows:

#### AMENDMENT.

No contract was entered into or made prior to the award between the Norman Paper Co. and the Purcell Envelope Co. After the award an oral contract was entered into whereby the Norman Paper Co. was to furnish claimant with air-dried paper with which to make stamped envelopes. The Postmaster General never approved of the use of air-dried paper or accepted the same as being a compliance with the specifications; neither did the claimant or the Norman Paper Co. convey to or notify the Postmaster General that it was proposed to make stamped envelopes from air-dried paper, nor did that officer indicate that he was satisfied that air-dried paper would produce equally good results as loft-dried paper. The Norman Paper Co. never equipped its plant for making loft-dried paper; neither did it acquire facilities therefor. It never indemnified the Purcell Envelope Co. with sureties, as stated in the foregoing letter (Apr. 15, 1898). It combined with the American Writing Paper Co. in 1899 and 1900.

#### XVII.

Whether or not the oral agreement mentioned in the last paragraph of the court's Finding X was to be performed within one year from the making thereof, and, if not, whether any memorandum or note thereof in writing was made and signed by the party to be charged thereby; and, if so, when and what were the terms thereof.

87

#### XVIII.

Whether or not the oral contract mentioned in the last paragraph of Finding X of the court was for the sale of paper for the price of \$50 or more, and, if so, whether the purchaser accepted and received any part of such paper or gave anything in earnest to bind the bargain or in part payment; and, if not, whether any note or memorandum in writing of the bargain was made and signed by the party to be charged thereby or by any person thereunto lawfully authorized so to do.

#### XIX.

Whether, when Postmaster General Smith, in making the investigation into the facts and circumstances (to which reference is made in Finding XIV of the court) surrounding the making of the award and the entering of the order revoking the same, on July 22, 1898, and notifying the claimant thereof, acted in good faith.

## XX.

Whether or not for the faithful performance of the contract on claimant's part a bond was tendered guaranteed by a corporation, and, if so, was the Postmaster General satisfied of its responsibility, and was such bond or undertaking approved by the Postmaster General?

## XXI.

Whether or not the parties contemplated, or intended, prior to the award, claimant's officers acting on its behalf and the Postmaster General on behalf of the Government, that in the event a contract was entered into for stamped envelopes and newspaper wrappers the same should be in writing and signed by both parties.

88

## XXII.

Whether or not the Postmaster General signed the written contract or directed the Third Assistant Postmaster General to do so in his name, and attest the same by the seal of the Post Office Department.

## XXIII.

1. Whether or not any correspondence or contract in writing was ever entered into between the Purcell Envelope Co. and Horace J. Wickham, relative to the furnishing by the latter to the former of Wickham envelope machines (p. 176, xq. 111; p. 775, xq. 463, 464).

2. Whether or not the price for Wickham machines was agreed upon between the Purcell Envelope Co. and Horace J. Wickham, and whether anything was said about the price therefor (p. 785, xq. 593, 594; p. 226, xq. 548).

3. Whether or not Mr. Horace J. Wickham owned any machinery to turn out the envelope machines (p. 176, xq. 113).

4. Whether or not the Wickham envelope machine was ever put upon the market (p. 178, xq. 143).

5. Whether or not it would have required about 75 Wickham envelope machines to make two and a half million envelopes per day (p. 174, q. 83; p. 176, xq. 110), and, if not, how many of said machines would have been required therefor, and at what cost and expense to claimant.

6. Whether or not the value of the Wickham envelope machine was from \$1,000 to \$1,500 (p. 177, xq. 125).

7. Whether or not the promise mentioned in Finding XI of the court was to be performed within one year from the making thereof, and, if not, was any memorandum or note thereof made in writing and signed by the person to be charged thereby, or by some person thereunto lawfully authorized so to do.

8. Whether or not the court included in the cost of materials,  
89 or other cost incident to the execution of the contract (Finding  
XX), anything on account of the purchase of the Wickham  
envelope machines by the claimant, and, if so, what amount was  
included therefor.

## XXIV.

1. Whether or not the Purcell Envelope Co., in September, 1898,  
had in its employ employees sufficient to execute the work of the con-  
tract (p. 271, xq. 50).

2. Whether or not the plant of the Purcell Envelope Co. was in  
operation in July, August, or September, 1898 (pp. 270, 271, qq.  
47, 48).

3. Whether or not the claimant sold its printing presses (p. 187,  
q. 79).

4. Whether or not claimant's plant was gotten together piecemeal  
and did not make envelopes to any practical purpose for more than  
three months (pp. 222, 223, q. 502).

5. Whether or not the approximate cost of labor in making  
stamped envelopes on the Wickham machines, outside of salaries,  
was 8 cents per thousand (pp. 766, 767, qq. 319, 320, 328, 331, 338,  
339, 340, 341), if not, what was the labor cost per thousand on such  
machines?

6. Whether or not the cost specified in the preceding proposition  
(5) would have been more if the labor had been performed on the  
machines in claimant's plant, and if so, would such cost have been  
approximately 5 to 8 cents more per thousand than on the Wickham  
machines—if not, what would have been the difference in cost (p. 188,  
qq. 104, 105; p. 724, qq. 267, 269; p. 725, q. 273).

90

## XXV.

1. Whether or not the sum of all the various issues, envelopes, and  
wrappers, which was to be the basis in round numbers for which the  
contract was awarded, was 600,658,000 (p. 78), and if not, what  
number did furnish the basis of the contract?

2. Whether or not the court included in the quantity of envelopes  
and wrappers called for by the Post Office Department during the  
four years beginning October 1, 1898, all or any part of the envelopes  
and newspaper wrappers which were purchased under the provisions  
of section 3709 of the Revised Statutes, and as set out in Finding  
XVI of the court, and, if so, how many issues of envelopes and news-  
paper wrappers were so included, and was the profit mentioned in  
Finding XX calculated on a basis which included the envelopes and  
wrappers which were purchased under the exigency stated in Find-  
ing XVI of the court?

## XXVI.

Whether or not a committee designated by the Postmaster General  
to investigate and report whether paper used in the manufacture of



stamped envelopes was inferior to contract requirements, and, if so, to recommend what action to be taken by the department, made the following report to the Postmaster General:

### XXVII.

Whether or not the item of labor cost in manufacturing stamped envelopes was included in Finding XX of the court, and, if so, was the same to be performed on the Wickham machines, or on the ordinary machines contained in claimant's plant (Finding I), and what was the amount fixed for such labor, exclusive of all other items?

91

### XXVIII.

Whether or not the court has included in Finding XX, or in any other finding, any or all of the several items of cost entering into the manufacture of stamped envelopes and newspaper wrappers, as follows: The cost of gum, ink, dies, matrices, and hubs; power, heat, and light; renewals and repairs of machinery; expenses of watchmen; office management, etc.; pasteboard or straw boxes; packing, wrapping, and casing; taxes, insurance, and water; waste in misprinting, etc.; cutting boards, dies, and renewals; contractor's labeling cost, and if so, the amount of said items, respectively.

### XXIX.

Whether or not the Purcell Envelope Co. was released from the care, trouble, risk, and responsibility of performing any or all the work required by the contract, and, if so, what amount was deducted from the claimant's theoretical profits, if any, on account of the Purcell Envelope Co. by release from the care, trouble, risk, and responsibility attending a full and complete performance of the work covered by the contract during the four years beginning October 1, 1898.

### XXX.

Whether or not the claimant did or attempted to do anything to mitigate the damages represented by the profits found and allowed in Finding XX of the court, and, if so, when and what did the claimant do?

Respectfully submitted.

J. ROBERT ANDERSON,

JOSEPH STEWART,

*Attorneys for the United States.*

92 VIII. *Defendants' application for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 18th day of December, 1916, in favor of claimant, the defendants, by their

Attorney General, on the 4th day of January, 1917, make application for and give notice of an appeal to the Supreme Court of the United States.

HUSTON THOMPSON,  
*Assistant Attorney General.*

Filed January 4, 1917.

Ordered:

That the above appeal be allowed as prayed for.

By the COURT.

MARCH 6, 1917.

93

Court of Claims.

THE PURCELL ENVELOPE COMPANY

*vs.*

The UNITED STATES.

} No. 22855.

I, Samuel A. Putman, Chief Clerk Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of a history of the proceedings; of the argument and submission of case; of the findings of fact and conclusion of law and opinion of the court; of the judgment of the court; of the application of the defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 4th day of April, A. D. 1917.

[SEAL.]

SAM'L A. PUTMAN,  
*Chief Clerk Court of Claims.*

94 (Indorsed on cover:) File No. 25,889. Court of Claims.

Term No. 467. The United States, appellant, vs. The Purcell Envelope Company. Filed April 5th, 1917. File No. 25889.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

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THE UNITED STATES, APPELLANT,	}	No. 168.
<i>v.</i>		
THE PURCELL ENVELOPE COMPANY,		
appellee.		

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*APPEAL FROM THE COURT OF CLAIMS.*

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## BRIEF FOR THE UNITED STATES.

### STATEMENT.

This is an appeal from a judgment for appellee in the sum of \$185,331.76, in which three judges concur and Chief Justice Campbell dissents.

Appellee, the Purcell Envelope Company, is a corporation, organized under the laws of the State of New York on July 3, 1894, having its principal office at Albany, New York.

On March 30, 1898, in response to an advertisement by the Postmaster General inviting bids, appellee submitted its proposal to furnish the Government with stamped envelopes and newspaper

wrappers for a period of four years beginning the 1st day of October, 1898. The specifications (Rec. 18), which were a part of the advertisement, provided that

If the bidder to whom the first award may be made should fail to enter into a contract as herein provided, then the award may be annulled, and the contract let to the next lowest responsible bidder, and so on until the required contract is *executed*; and such next accepted bidder shall be required to fulfill every stipulation embraced herein as if he were the original party to whom the contract was awarded.

*The contract will be executed in quadruplicate.*  
[Italics ours.]

The specifications also stated under the subject "Basis and Manner of Award" (Rec. 16) that "The contract will be awarded on the basis of the issues, in round numbers, of corresponding sizes and qualities, for the year ending December 31, 1897, as follows." Fourteen sizes and qualities were enumerated with the number set opposite each size and quality, and totaling 600,658,000 for the year. The specifications further require appellee (Rec. 17) "to furnish at the prices bid all the envelopes and wrappers that may be ordered by the Department during the contract term \* \* \* subject to the provision as to those on hand at the termination of the present contract." Appellee was to satisfy the Postmaster General upon ten days' notice of his ability to perform the contract, and upon his failure to do so the

Postmaster General could, "in his discretion decline to accept the bid, and without notice." (Rec. 17.) Appellee was to accompany his proposal with a bond which, as in this case, was to be furnished by a guarantee company of whose responsibility the Postmaster General must be satisfied and if at any time he became dissatisfied the Postmaster General could, within ten days after notice, call for additional security, and in the event of the same not being produced could annul the contract. (Rec. 17, 18.)

Appellee submitted its proposal (Finding III, Rec. 46) "to enter into contract according to the terms, conditions, and requirements of the advertisement and specifications aforesaid." Before the award was made on April 20, 1898, Postmaster General Gary, through one of his officers, investigated the "business and financial standing of the claimant," and the report thereunder was favorable to said claimant. (Rec. 49.) Upon notifying appellee of the award made by the Postmaster General to appellee (Finding V, Rec. 50), the Third Assistant Postmaster General said in his letter of April 20:

As soon as it can be prepared, a form of contract will be sent to you for formal execution.

Such contract was sent on April 21, 1898, in quadruplicate (Finding VI, Rec. 50), and on the same day a letter was transmitted to appellee requesting new and distinctive designs of embossed stamps on all the envelopes. (Finding VII, Rec. 51.) The form of contract was returned to the Third Assistant



Postmaster General on April 22, 1898, signed by the Purcell Envelope Company by the president, James Purcell, and its surety, The Fidelity & Deposit Company of Maryland, by its vice president. The contract was not signed by the Postmaster General or any officer on behalf of the United States (Finding VIII, Rec. 51), neither was the surety approved. Five days after its return appellee was notified by letter that the Postmaster General had not yet signed the contract and was holding the matter in abeyance, and appellee was requested to suspend all action under letter of the 21st instant, until further orders. (Finding IX, Rec. 52.)

On April 21, 1898, Charles Emory Smith became Postmaster General (Rec. 60), and instituted an investigation (Rec. 54) into the business and financial standing of appellee, and the report was unfavorable.

On July 22, 1898, the Postmaster General, not having signed the contract nor approved the bond, recalled and annulled the award to appellee (Finding XIV, Rec. 53). On July 26, 1898, the Postmaster General, acting under the powers granted to him by section 3709 R. S., gave an emergency order to the Plimpton Manufacturing Company of Hartford, Conn., and on October 25, 1898, entered into a contract with the said company for stamped envelopes and newspaper wrappers for the four years beginning January 1, 1899. (Rec. 54-58, Findings XVI and XVII.) No wrappers or envelopes were ever ordered by the Government from appellee.

Subsequently appellee instituted this action in the Court of Claims and the court rendered judgment in its favor in the sum of \$185,331.76, being the difference between what it declared was the cost of materials and manufacture of said envelopes and newspaper wrappers, to wit, \$2,275,224.46, and what it termed "claimant's contract price of \$2,460,556.22." (Finding XX, Rec. 59.)

The Government maintains that there could have been no contract unless the same was in writing and signed by the Postmaster General or a properly authorized officer; that no such written contract having been entered into, appellee is foreclosed from bringing suit on contract for anticipated profits; that admitting for the purposes of this statement only that there was a contract, then attention is called to the fact that the Government presented evidence which has been brought to this court's attention by a motion to remand on the ground that the lower court refused to find ultimate facts therefrom, although requested so to do (Rec. 67); that if the Government was correct in its position in said motion, and such ultimate facts had been incorporated in the findings, it would have appeared that Postmaster General Gary was misinformed of appellee's ability to perform his prospective contract, and that the information acquired by the investigation of Postmaster General Smith would have shown that appellee was in such a position financially and otherwise as to raise a serious doubt in the mind of Postmaster General Smith as to appellee's ability to perform

such contract; that having discretion, under the terms of the contract, he annulled the award, and in so doing foreclosed appellee's right to any judgment; that, admitting for the purposes of this statement only that there was a contract, nevertheless the court should have found what the cost of acquiring the Wickham envelope machines (Finding IX, Rec. 53) was to appellee and should have reduced the judgment by said amount; that admitting for the purpose of this statement only that appellee was entitled to judgment, the same should have been based upon the issues in round numbers of corresponding sizes and qualities (Rec. 16) for the year ending December 31, 1897, being four times 600,658,000 for a four-year period, to wit, 2,402,632,000, and not based upon all of the envelopes manufactured by the Plimpton Company under the emergency order and its contract for a four-year period, being, to wit, 3,050,237,250; that, admitting for the purposes of this statement only, there was a contract, then the court should have rendered judgment for a less sum than entered, due to the elimination of the hazard accruing to appellee if it had performed the contract, as revealed by the said contract. (Rec. 27, 28.)

Appellee's position is that when the award was made by the Government to it a contract was consummated and the signature of the Postmaster General to the contract itself was not required; that the Government breached the same by failure to

order any envelopes during the four-year period and subjected itself to a judgment for the difference between the alleged cost of said envelopes and wrappers and the contract prices which Plimpton & Company received for all the envelopes manufactured by said company for the Government under an emergency order of July 22, 1898 (Finding XVI, Rec. 54), and its four-year contract beginning January 1, 1899 (Finding XVII, Rec. 56).

The court's attention is respectfully called to the fact that on January 13, 1919, appellant's motion to remand this cause to the Court of Claims for additional findings was denied without foreclosing the power of the court to make such order hereafter on its own motion if so advised. The matters presented under headings First, Second, Third, and Fourth of this brief relate to certain matters covered by the motion, which, it is submitted, should be considered on the merits.

**ASSIGNMENTS OF ERROR.****I.**

The court erred in rendering judgment for appellee and against appellant.

**II.**

The court erred in refusing to dismiss the petition.

**III.**

The court erred in finding as a conclusion of law upon the findings of fact that appellee was entitled to a judgment against appellant in the sum of \$185,331.76.

**IV.**

The court erred in failing to make findings of fact upon questions of fact requested by appellant and as set forth in the record (67-76).

**ARGUMENT.****FIRST.**

**The contract on its face required the signature of the Postmaster General and without such signature was not binding upon the Government.**

The Government maintains that the steps taken leading up to the drafting of the contract, and the language of that document on its face required the signature of the Postmaster General in order to bind the Government.

On March 30, 1898 (Finding III, Rec. 46), appellee submitted its proposal which stated that:

In the event of the acceptance of the foregoing bid, the said *The Purcell Envelope Co.*

*agrees, within ten days from the date of such acceptance, to enter into contract according to the terms, conditions, and requirements of the advertisement and specifications aforesaid; in which contract the contractor and its sureties shall covenant and agree that in case the said contractor shall fail to do or perform all or any of the covenants, stipulations, and agreements of said contract on the part of the said contractor to be performed, as therein set forth, the said contractor and its sureties shall forfeit and pay to the United States of America the sum of two hundred thousand dollars, for which said forfeiture the said contractor and its sureties shall be jointly and severally liable as fixed and settled damages, and not as a penalty to be reduced or diminished, to be sued in the name of the United States.* [Italics ours.]

On April 20, 1898 (Finding V, Rec. 50), Third Assistant Postmaster General Merritt wrote Mr. James Purcell, president of the company, notifying him of an order awarding the contract to his company and saying, "As soon as it can be prepared, a form of contract will be sent to you for formal execution."

On April 21, 1898 (Finding VI, Rec. 50), Mr. Merritt again wrote Purcell saying that he was sending the "contract in quadruplicate, to be entered into" and asking him to sign it at once. On the same day (Finding VII, Rec. 51), and obviously before the contract had been signed by Purcell, he wrote a third letter to Mr. Purcell asking for some new and

distinctive designs of embossed stamps on all the envelopes, indicating thereby that the contract was not closed at that time.

The contract itself (Rec. 7) shows that it was to be "executed in quadruplicate, between the United States of America, acting by the Postmaster General of the first part, and the Purcell Envelope Company \* \* \* of the second part." This document concludes (Rec. 29) with a declaration that the "said Postmaster General has caused the seal of the Post Office Department of the United States of America to be hereunto affixed, and has attested the same by his signature," and provides a blank space for the Postmaster General to sign and for the attest by the Third Assistant Postmaster General.

In response to appellee's contention that the making of the award bound the Government the same as if a contract had been signed, it should be noted that from pages 20 to 29, inclusive, of the record there are set forth eleven paragraphs defining the duties of the contractor and eighteen paragraphs defining the duties of the Government, none of which was in the specifications upon which the bid was made and hence could not have been considered at the time of the award.

The manner of executing the contract, as just referred to, is in accord with the act of Congress approved March 3, 1877 (19 Stat. 319, 335), of which section 4 is as follows:

SEC. 4. That the Third Assistant Postmaster General, when directed by the Postmaster



General, may also sign, in his name, in the place and stead of the Postmaster General, and attest his signature by the seal of the Post Office Department, all contracts for supplies of postage stamps, *stamped envelopes, newspaper wrappers*, postal cards, registered package envelopes, locks, seals, and official envelopes for the use of postmasters, and return of dead letters, that may be required for the Postal Service. [Italics ours.]

Whether the Postmaster General delegated his authority to execute the contract is not necessary to determine. It is obvious, however, that whether the contract was to be executed by him or an assistant, the manner of doing so was prescribed by the language of the contract and by statute. From this correspondence leading up to the execution of the contract, the inference is unavoidable that both parties thereto had notice and understood that the contract would not be binding until both parties signed it.

The principle is illustrated in the case of *Steamship Co. v. Swift*, 86 Me. 248, and cases therein cited. Plaintiff brought an action for approximately \$25,000 as damages for breach of a contract which had been "carefully drawn up." The court said (p. 261) that the same "was at the most only the acceptance of the proposed basis of a contract." Discussing the contract the court said (p. 259):

That in determining which view (whether there was or was not a binding contract) is entertained in any particular case, several circumstances may be helpful, as: Whether

the contract is of that class which are usually found to be in writing; whether it is of such nature as to need a formal writing for its full expression; whether it has few or many details; whether the amount involved is large or small; whether it is a common or unusual contract; whether the negotiations themselves indicate that a written draft is contemplated as a final conclusion of the negotiations. If a written draft is proposed, suggested, or referred to during the negotiations, it is some evidence that the parties intended it to be the final closing of the contract.

In the foregoing case the defendant denied the existence of a contract, and the court held, "there is no contract until the written draft is finally signed." The instant case embodies all the circumstances enumerated in the case cited, and for that reason reinforces the conclusion that in law a contract was not made in the case at bar.

In the case of *Ambler v. Whipple*, 20 Wall. 546, 556, the question arose over the dissolution of a copartnership. For this purpose an instrument was prepared. It was signed by Whipple, who asserted that plaintiff had promised to sign it, and hence it was binding on both of them. The document showed upon its face that it required the signature of both parties. Answering claimant, the court said:

Admitting all this to be true, it is very clear that both parties intended to have a written instrument signed by each as the evidence of

any contract they might make on that subject, and neither considered any contract concluded until it was fully executed.

In the case of *Commercial Telegram Co. v. Smith*, 47 Hun. (New York) 494, an agreement was apparently made by correspondence. The minds of the parties met upon the subject, which related to the placing of reporters upon the floor of the stock exchange. The proposal of one of the parties was accepted by the other, who stated that they were ready to execute an agreement whenever submitted. The court said:

There is, of course, no question but that a contract may be entered into by letter as well as any other way, as long as the parties understand that the one is making a proposition the acceptance of which shall make a contract binding upon both parties. If, however, from the nature of the correspondence it appears that such correspondence is intended to be only the settlement of the preliminaries of a more formal contract, *and that it is the intention of the parties that these preliminaries shall be reduced to the form of a more formal agreement, to be executed by the parties, then the proffer of these preliminaries on the one part and the acceptance of them on the other by no means constitute a contract because it is the intention of the parties that something else shall be done before the proposed agreement shall become binding* (501-502). [Italics ours.]

In the foregoing case the plaintiff had "made large expenditures," but the court said that the fact that

it had acted in this manner afforded no ground to find the existence of a contract (503).

Applying the reasoning laid down in these cases to a situation where an executive officer of the Government, acting for the public interest and under laws requiring preliminary negotiation with formalities to be entered into before the final execution of a contract, a much stronger emphasis may be laid upon the proposition that the contract herein could not be considered binding until signed by the Postmaster General or his assistant.

Appellee was presumed to be conversant, through past experience, with the method required by the Government in the execution of the contract. His contract of 1894 (Finding I, Rec. 44) for the manufacture of envelopes, was signed and executed by the parties in the form and manner as required in the signing of the instant contract. In fact, all contracts of a similar character for envelopes and wrappers had been signed by the Postmaster General since 1882. (Reports P. M. G. 1882, pp. 335-336; id. 1886, pp. 754-768; id. 1890, pp. 933-949; id. 1894, pp. 522-535; id. 1898, pp. 802-814.)

The contract called for (Rec. 17) the approval of the standing of the guarantee company that was to act as surety, and of the bond that was to be given. Appellee supplied a bond executed by the Fidelity & Deposit Company of Maryland for the amount required by the statute and returned the same with the contract to the Postmaster General on April 22, 1898. The latter did not approve of either the

surety or the bond. Postmaster General Gary had been succeeded by Charles Emory Smith on April the 21st. The contract had gone forth from the post office under Mr. Gary's régime. However, as early as the 27th, five days after the receipt of the contract from appellee, Postmaster General Smith notified appellee (Rec. 52) that he had not signed the contract, and requested suspension of all action until further orders. It is argued by appellee, and its contention is supported by the opinion (Rec. 52), that silence on the part of the Postmaster General during this period of five days from the time the contract was mailed to him was equivalent to approval of the surety and of the bond. Such a presumption, however, can not be indulged in against even a private party from the standpoint of time, and surely not against an official who is charged with the multifarious public duties devolving upon the Postmaster General. Such a presumption would also be worthless as against the Postmaster General, since the formal language of the contract called for his approval of the surety and the bond. He had a right to express this approval in the manner which the contract prescribed, and this was by his signature to the contract, duly attested and returned to appellee. The approval of the surety and the bond was a condition precedent of which appellant had the right to avail itself, and before appellee could recover under any circumstances it must have been shown that appellant approved in both instances. The record fails to

show any approval, and it does not disclose a waiver thereof. Approval of the bond was not only required by the terms of the contract, but by statute, for the act of Congress of August 13, 1894 (28 Stat. 279), entitled "An act relative to Recognizances, Stipulations, Bonds, and Undertakings, and to allow certain corporations to be accepted as surety thereon," recites as follows:

Provided, That such recognizance, stipulation, bond, or undertaking *be approved by the head of department, court, judge, officer, board, or body executive, legislative, or judicial required to approve or accept the same.* [Italics ours.]

Since appellee can not show a contract signed by the Postmaster General and properly attested, and has failed to prove that he accepted the bond or the surety, and the award was revoked and canceled by the Postmaster General (Rec. 53, Finding XIV), appellee is foreclosed from any claim for anticipated profits.

*Monroe v. United States*, 184 U. S. 524, 529.

*National Bank v. Hall*, 101 U. S. 43, 50.

*Bank v. Dandridge*, 12 Wheat. 64.

It is asserted that the acceptance of appellee's bid and the award constituted a contract. Appellee relies upon an intermediate transaction in support of an alleged express contract and quotes much from the Garfield case (93 U. S. 242), but ignores a vital distinction between that case and the one at bar. In the Garfield case there was a proposal submitted

to carry mail; it was accepted and thereafter "suspended," and a contract entered into with another person to carry mail. The court said:

The proposal \* \* \* and the acceptance \* \* \* created a contract of the same force and effect as if a formal contract had been written out and signed by the parties \* \* \*. We believe it to be sound *and that it should be so held in the present case.* [Italics ours.]

The court did not say, or assume to say, that the acceptance of a proposal in *all* cases constituted a contract, but held that it did "in the present case" (Garfielde). There was a reason for the conclusion in the Garfielde case which does not obtain in the case at bar. Congress made a contract for the Postmaster General in the cited case. The statute under which it was awarded so provided. The award was made under and in pursuance of section 3949, R. S., which provides:

All contracts for carrying the mails \* \* \* shall be awarded to the lowest bidder tendering sufficient guarantees for faithful performance.

Section 3945, R. S., provided for the guarantees, what they should contain, and how signed.

Section 3946, R. S., provided for the nature of the proof, showing that the bidder had the pecuniary ability to fulfill his obligations, along with certain other requirements.

Section 3954 provided that any person receiving the award of such a contract who refused or failed



to enter into it, wrongfully, should be guilty of a misdemeanor.

Garfielde produced the requisite guaranties; he was the lowest bidder. Congress directed the Postmaster General to award the contract to the lowest bidder presenting these guaranties. In other words, in awarding the mail contract to Garfielde, the Postmaster General was performing a ministerial duty only. He had simply to ascertain who was the lowest bidder, and whether or not such bid was accompanied by the guaranties specified in the statute. These facts determined to whom the contract must be awarded, and with whom it must be made. The Postmaster General did not do what Congress directed him to do. Hence Garfielde recovered for a sum equal to one month's compensation under the proposal made by him and accepted by the Postmaster General, which was the amount provided by the regulations of department. The instant case does not involve such a principle, as will later appear in this brief.

#### SECOND.

**Postmaster General Smith had the discretionary power to vacate the award made by his predecessor, since the contract was not consummated and he was acting in a quasi-judicial capacity.**

Appellee challenges the right of Postmaster General Smith to vacate the award which had been granted by Postmaster General Gary, alleging in the petition (Rec. 5) that Postmaster General Smith refused to

keep and perform the contract "without any just, legal or reasonable cause whatsoever." The court has found (Finding IV, Rec. 49) that:

Before issuing the foregoing order Postmaster General Gary instituted an investigation through one of his proper officers into the business and financial standing of the claimant, and the report thereunder was favorable to said claimant.

It will be recalled that immediately after the sending of the contract form to appellee Postmaster General Gary resigned and Charles Emory Smith, who succeeded him, instituted an investigation of the matters surrounding the award in question, and on July 22 (Finding XIV, Rec. 53) he issued an order revoking and cancelling the same.

The court has found (Finding XIV, Rec. 54):

Before issuing the foregoing order Postmaster General Smith instituted an investigation through one of his proper officers into the business and financial standing of the claimant, and the report thereunder was unfavorable to the said claimant.

There was no limitation upon the Postmaster General in the making of such a contract other than that he should approve of the bond and bondsmen; should execute the contract, have it properly attested, and make the same for a period not exceeding four years. Otherwise he was a free agent, acting for the Government, with full discretionary powers in the making of the contract. Notwithstanding that Post-

master General Gary had approved of the business and financial standing of appellee, the Government's position is that the awarding of a contract in this instance was the exercise of a judicial function, it being not mandatory upon the Postmaster General to accept appellee's bid, and his action being judicial rather than ministerial, he had the right to review a predecessor's decision, if in his opinion it was founded upon mistake.

In the case of the *United States v. Bank of the Metropolis*, 15 Pet. 377, 401, the court recognized a principle which the Government sought to have the Court of Claims consider in the present case when it said:

This right in an incumbent (head of a governmental department) of reviewing a predecessor's decision, extends to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims, in which material testimony is afterwards discovered and produced.

In view of the foregoing doctrine, unless Postmaster General Smith acted in a manner so capricious as to imply bad faith, which is not to be presumed since the court did not so find, he had the authority to annul the award in the light of the information brought to him relating to appellee's lack of ability to perform the contract. It was this conception of the situation that the Government endeavored to present to the court in its request for findings which the court overruled, as set

forth in the record (pp. 67-76). The purpose of Findings I-X, inclusive, and XIX was to draw from the court ultimate findings on five propositions based on the evidence in the case:

(a) What the representations (proposed Findings I and II) were that had been made to Postmaster General Gary concerning the financial responsibility of the company, its officers and stockholders, and the company's capacity and equipment for performing the contract;

(b) What evidence (proposed Findings III-IX, inclusive) Postmaster General Smith developed from his investigation showing that the information presented to Postmaster General Gary was misleading, deceiving and wholly wrong;

(c) What facts (proposed Findings VII, VIII, and IX) had been brought to the attention of the Postmaster General soon after the award by a competitive bidder who asserted that the award should have been made to him and that the award to appellee was not just or legal, the purpose of the Government being to show that Postmaster General Smith was put upon notice of these facts, and as a public official, should have acted;

(d) Whether (proposed Finding XIX) Postmaster General Smith in making the investigation and revoking the award was acting in good faith;

(e) Whether (proposed Finding X) appellee understood after the award was made that he did have not a contract.

For the purposes of brevity reference will only be made to this matter as set forth in appellant's motion for an order on the Court of Claims to make and certify findings of fact on file herein. Suffice it to say that had the court found the facts set forth in the proposed findings, or ultimate findings therefrom, it must have found that appellee made a misrepresentation to Postmaster General Gary of his ability to perform, thereby deceiving him, and that Postmaster General Smith not only acted in good faith in annulling the award, but in his exercise of a judicial function and in fairness to competitors of appellee must have acted as he did.

All of the matters of fact set forth in the proposed Findings I to X, inclusive, and XIX are based upon evidence of record in the court below.

As the defense on this phase of the case was not only the Postmaster General's right to review the award, but also because of misrepresentation on the part of appellee, the Government understands the rule to be that the facts revealing the misrepresentation should be found and hence its reason for setting forth *in extenso* in the proposed findings those facts which would demonstrate the misrepresentation and put this court in the position of being able to review the whole situation and determine whether ultimate findings should be made by the court below. (*United States v. Pugh*, 99 U. S. 265, 270-271.) Had the court found that the information brought to Postmaster General Smith was true and the represen-

tations made to Postmaster General Gary before the award were false, then it must have held that Postmaster General Smith acted within his rights and was warranted in vacating the award to appellee.

As the charge of acting "without any just, legal, or reasonable cause whatsoever," goes to the crux of this branch of the case, it is only fair that every possible light should be thrown upon the action of the Postmaster General to explain the same. By reference to Finding I it is seen that appellee failed to complete the contract for 1894, but sublet the same to the Morgan Plimpton Company after fifty or sixty million plain stamped envelopes and newspaper wrappers had been manufactured by appellee, despite the fact that the contract of 1894, by its specifications, stated that the contract should not be transferred or assigned. This requirement in the contract of 1894, as in the instant contract, was not a vain thing, for the personal equation in such a contract was of very great importance to the Government. It was for stamped envelopes and wrappers, which had a market at all times, and once in the market it would be impossible to trace their source.

The question of the protection of the dies from theft, destruction or counterfeit was of no small moment to the Government. The dies and hubs to be used for embossing the stamped envelopes, belonging to the Government, were not to be turned over to appellee until after the execution and approval of the contract. (Rec. 12.)

For these and many other reasons the Government had the right to know before signing the contract whether appellee would be able to fulfill the same. The question which would naturally arise in the mind of Postmaster General Smith would be, did appellee intend to assign the contract of 1898, despite the specification forbidding it to do so (Rec. 18), as it had done in 1894? Apparently it was not to its profit to carry the contract through in 1894, and obviously from Finding I it did not have the plant. There is nothing in the record to show that it had any better plant in 1898.

In view of the facts presented to Postmaster General Smith as to the inability of appellee to perform, and in view of the Government's experience with appellee in 1894 when it sublet its contract in contravention of section 3737 R. S., the Postmaster General in annulling the award undoubtedly believed he was striking at the root of one of the greatest evils that confronts the Government in doing business. This court has said in *Tool Company v. Norris*, 2 Wall. 45, 54:

All contracts for supplies should be made with those, and with those only, who will execute them most faithfully, *and at the least expense to the Government*. Consideration as to the most efficient and economical mode of meeting the public wants should alone control, in this respect the action of every department of the Government.



For a person to secure a contract from the Government and sublet the same means simply the loading of the contract with the commission or profit that this individual intends to obtain for his services. Such a practice is not efficient or economical. The Government has the right to deal directly and to have the benefit of the personal knowledge of the party with whom it is dealing. It was for this purpose that section 3737, R. S., forbidding the transfer or assignment of a contract or any part thereof with the Government, was enacted. Since there is nothing in the findings to show that appellee was in any better position to carry out the contract in 1898 than in 1894, did not the Postmaster General have the right to presume, in view of what had been presented to him as to appellee's financial standing, that appellee contemplated subletting the contract as in 1894, thus costing the Government appellee's commission or profit loaded upon what ought to have been the normal contract price? Such a presumption can be the more readily indulged in when one compares the difference in the cost of the bid prices for the envelopes made by appellee and accepted (Rec. 35) and the contract prices for envelopes made by the Plimpton Company and accepted (Finding XVII, Rec. 56, 58), the concluding part of which states that "under the new four-year contract [Plimpton Company contract] the reduction will be, counting probable increase of issues, about \$350,000 a year, or for the whole term of the contract \$1,400,000."

If appellee had in mind subletting the contract, he, of course, would have included a profit to himself. The foregoing figures demonstrate with unquestionable accuracy the amount with which he would have loaded the contract, for the Plimpton Company was an old and established firm and the prices they contracted for undoubtedly gave them a reasonable profit.

In view of the situation as revealed by the findings, can it be said that Postmaster General Smith in annulling the award acted without just, legal, or reasonable cause?

### THIRD.

Assuming, for the sake of argument only, that there was a contract, then the damages found were excessive in that: (a) Anticipated profits were allowed on more envelopes than the contract called for; (b) the court failed to include in the expense of performing the contract the necessary cost to appellee in purchasing or otherwise acquiring the Wickham envelope machines; (c) no deduction was made from the judgment on account of appellee's release from the risk, etc., attending the execution of the contract.

(a) Anticipated profits were allowed on more envelopes than the contract called for.

Should the court hold that there was a contract, then the Government maintains that the judgment was erroneous and excessive. Appellee based its ground for recovery in the matter of anticipated profits on the difference between the cost of making and furnishing all of the envelopes and wrappers used during the period of four years dating from the first day of October, 1898, and the amount paid to

Plimpton Company. It refers to the contract (Rec. 20) as follows:

First. That the said contractor shall furnish and deliver promptly and in quantities as ordered, and subject to the approval of the Postmaster General in every respect, all the stamped envelopes and newspaper wrappers that *it may be called upon by the Post Office Department to furnish* during the four years beginning on the first day of October, 1898, etc. [Italics ours.]

This language is further limited by that found in the specifications (Rec. 17), where it says:

It must be understood, however, that any proposal made under the advertisement and these specifications shall impose the obligation to furnish at the prices bid all the envelopes and wrappers that *may be ordered by the department during the contract term without regard to the quantities above given, subject to the provision as to those on hand at the termination of the present contract.* [Italics ours.]

The paragraph of the contract which provides for envelopes and wrappers on hand at the termination of the present contract is as follows (par. 13, Rec. 28):

13. That the department shall, after satisfactory inspection, accept and pay for, at the regular contract prices, the stock of stamped envelopes and wrappers that may remain on hand at the close of the contract term; and the contractor may be required to issue them subject to the conditions of the contract, but provided that such stock shall not exceed in quantity the average requirements of the

department for a period of fifteen days; and any surplus over that quantity may be destroyed, at the discretion of the Postmaster General, without any compensation therefor.

The foregoing paragraph, read with the other paragraphs heretofore referred to in this connection, requires the contractor to furnish envelopes and wrappers in such number as may be called for by the department, but the *quantities* or kinds or qualities which go to make up the total number called for as estimated in the specifications may be disregarded. For example, the number of No. 1 first quality envelopes estimated at 481,000 issues might be increased and the quantity estimated for No. 2 decreased, and so on throughout the entire list. This would not affect the maximum quantity which might be called for, to wit, not to exceed in round numbers 600,658,000 annually, or 2,402,632,000 during the four-year period. This was the basis of the contract (R. 16) and the department could not have been compelled to take more.

The language of the contract protected the appellee from an emergency call under Section 3709 of the Revised Statutes such as there was in this case and which was met by the Plimpton Company (R. 54, F. XVI), and by a parity of reasoning releases the Government from paying appellee anticipated profits on any of the envelopes and wrappers furnished under the emergency call.

Yet the court in its judgment has included as the basis thereof those envelopes ordered under the emergency call.

As will be seen from Finding XVIII (R. 58), the court has not separated the item under the emergency call from the item under the four-year contract given to the Plimpton Company, and it was for the purpose of finding out what items composed the total of 3,050,237,250 envelopes and wrappers that the Government requested the court to grant the proposed Finding XXV (Rec. 75).

If the item under the emergency contract were eliminated from the 3,050,237,250 envelopes and wrappers, there would be left the number of envelopes and wrappers manufactured under the Plimpton contract. This, however, can not be the basis of an allowance for anticipated profits to appellee, for he is confined to profits on whatever claim he had at the time the award was annulled, if at all, instead of waiting until the four-year period had passed to determine how many envelopes and wrappers had been used by the Government. The number that he was entitled to at the time of cancellation is clearly revealed by reference to that part of the specifications (Rec. 16) wherein it says, under the heading "Basis and Manner of Award" that:

The contract will be awarded on the basis of the issues in round numbers, of corresponding sizes and qualities, for the year ending December 31, 1897, as follows:

And then follows an itemized statement of the numbers estimated under 14 different qualities and totaling 600,658,000 annually. For the four-year period this would have amounted to 2,402,632,000. If there was a contract, then the claim for anticipated

profits should have been based on this number rather than on 3,050,237,250. *Merriam v. United States*, 107 U. S. 437, 444.

The court was requested to state whether the basis of its judgment included the issues of envelopes and wrappers purchased under the emergency contract, and if so how many issues were so included. (Rec. 75, F. XXV.) Where there is an outstanding contract for envelopes the Postmaster General has the right to enter into an emergency contract during the same period, but he can not charge the excess cost thereunder to the four-year contract. *Plimpton Manufacturing Co. v. U.S.*, 15 C. Cls. 14; 21 A. G. Op., 181.

For a like reason the contractor can not appropriate to his benefit the subject matter involved in an emergency contract growing out of public exigency as the basis for a valid claim.

- (b) The court failed to include in the expense of performing the contract the necessary cost to appellee in purchasing or otherwise acquiring the Wickham envelope machines.

The court made the following finding (Rec. 53):

Claimant, contemplating making the envelopes under its said contract on the Wickham envelope machines, entered into negotiations with Horace J. Wickham whereby he promised to furnish claimant with a sufficient number of said machines on which to perform said (envelope) contract, and to have some of them ready before the beginning of the contract term, October 1, 1898.

The Wickham machine referred to made the envelope in one operation (Rec. 44, 45, Finding I), and was the latest type of machinery for such work.

(Rec. 53, Finding XII.) At the time in question the plant of another company located at Hartford, Conn., was the only one in the United States equipped with the Wickham machines. (Rec. 44, 45, Finding I.) Appellee's plant was not equipped with them, but with "ordinary envelope folding machines." (Rec. 44, Finding I; Rec. 53, Finding XII.)

So far as the findings in this case are concerned there is nothing to show that the court, as an incident to the cost of performance of the contract, considered the cost of the Wickham machines to appellee, although evidence of the same was submitted to it. (Rec. 74, 75, Finding XXIII, pars. 5, 8.)

In order to have supplied the 3,050,237,250 envelopes and wrappers during the four years beginning October 1, 1898, it would have been necessary to manufacture the same at the rate of approximately two and one-half millions per day, which could have been done only on the Wickham machines. The capacity of appellee's plant was only 2,000,000 per day. (Rec. 44, F. I.) Hence the importance of having it clearly determined what amount, if any, the court allowed for the use of said machines, a matter which the Government attempted to have the court find, but without avail. (Rec. 74, 75, Finding XXIII, pars. 5, 8.)

Had the court found the cost thereby incurred the same would have reduced the amount of the judgment if subtracted from the anticipated profits. If the court did find this item, and did consider it in arriving at the judgment, appellant is entitled to know this. *United States v. Smith*, 94 U. S. 214, 218.



- (c) No deduction was made from the judgment on account of appellee's release from the risk, etc., attending the execution of the contract.

A most casual reading of the specifications reveals (Rec. 23, pars. 5 to 10, inclusive; Rec. 27, pars. 3 to 14, inclusive) the fact that appellee would be involved in risk in the carrying out of the contract. So far as the findings are concerned it does not appear that the court allowed a reasonable deduction from the amount of the judgment by reason of appellee's release from care, trouble, risk, and responsibility attending the performance of the contract.

It was for the purpose of clarifying this situation that the Government submitted the proposed Finding XXIX. (Rec. 67, 76.) The Government maintains that if no deduction has been allowed, the judgment should be subjected to the same. If, on the other hand, an allowance has been made the Government maintains that it has the right to know the amount so deducted.

*United States v. Speed*, 8 Wall. 77-84.

*Insley v. Shepard*, 31 Fed. 869, 873.

*McMaster v. The State of New York*, 108 N. Y. 542, 543.

*Danforth v. Tennessee & Coosa R. R. Co.*  
93 Ala. 614, 620.

It is respectfully submitted that the judgment should be reversed and the case remanded with an order to the lower court dismissing the petition.

HUSTON THOMPSON.

J. ROBT. ANDERSON,

*Attorney.*

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# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

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THE UNITED STATES, APPELLANT, <i>v.</i> THE PURCELL ENVELOPE COMPANY, Appellee.	} No. 168.
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APPEAL FROM THE COURT OF CLAIMS.

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**APPELLANT'S MOTION FOR AN ORDER ON THE COURT  
OF CLAIMS TO MAKE AND CERTIFY FINDINGS OF  
FACT, AND BRIEF.**

Now comes appellant, by the Solicitor General, and moves the court for an order directed to the Court of Claims requiring said court to make and certify as part of the record here, findings of fact on the several questions of fact following, to wit:

1. Whether the court included in the cost of materials, or other cost incident to the execution of the contract (as a basis for its judgment Finding XX), anything on account of the purchase of the Wickham envelope machines by the claimant, and, if so, what amount was included therefor.

2. Whether it would have required about 75 Wickham envelope machines to make two and a half million envelopes per day, and if not, how many of

said machines would have been required therefor, and at what cost and expense to claimant (R. 67, 74-75, XXIII, 5, 8).

3. Whether the sum of all the various issues, envelopes and wrappers, which was to be the basis in round numbers for which the contract was awarded, was 600,658,000 annually (p. 78), and, if not, what number did furnish the basis of the contract.

4. Whether the court included in the quantity of envelopes and wrappers called for by the Post Office Department during the four years, beginning October 1, 1898, all, or any part, of the envelopes and newspaper wrappers which were purchased under the provisions of section 3709 of the Revised Statutes, and as set out in Finding XVI of the court, and, if so, how many issues of envelopes and newspaper wrappers were so included, and was the profit mentioned in Finding XX, calculated on a basis which included the envelopes and wrappers which were purchased under the exigency stated in Finding XVI of the court (R. 67, 75, XXV 1, 2).

5. Whether the Purcell Envelope Co. (appellee) was released from the care, trouble, risk, and responsibility of performing any, or all the work required by the contract, and, if so, what amount was deducted from claimant's alleged profits, if any, on account of appellee being released from the care, trouble, risk, and responsibility attending a full and complete performance of the work covered by the contract during the four years beginning October 1, 1898 (R. 67, 76, XXIX).

And pertinent to the investigation conducted after the award and as tending to show that Postmaster General Gary had been imposed upon and deceived both with respect to the business and financial standing of the claimant, as well as its ability to perform a contract, and that the whole matter was still with the control of his successor, Postmaster General Smith, and was so treated by the parties, the court below was requested to make findings of fact on the following questions of fact, viz:

I.

Whether, according to the official report made by a proper officer of the Post Office Department during the investigation, referred to in Finding IV of the court, Mr. James Purcell made a statement with regard to the financial condition of the stockholders of the Purcell Envelope Co., and stated that he himself owned real and personal property of the value of \$60,000, not including his interest in the company; that he had reason to believe that Mr. H. E. Townsend (who was claimant's vice president in 1898, p. 182, qq. 10-13) owned \$30,000 or \$40,000, and that Payn probably owned several hundred thousand dollars; and, if so, whether or not the report containing such information was transmitted to the Hon. James A. Gary, Postmaster General, prior to the award (p. 16, first paragraph under heading "Financial condition of company and its stockholders)." (R. 67.)

## II.

Whether, on or about April 4, 1898, and prior to the award, the Purcell Envelope Co., by James Purcell, president, sent a written communication to Hon. James A. Gary, Postmaster General, Washington, D. C., in connection with its bid, wherein it was stated, among other things, that the company then had machinery in place guaranteeing a product of over two and a half million envelopes daily, a quantity far in excess of the demand of the Government; that it now had a magnificent brick factory at Holyoke, Mass., 100 by 60 feet, 6 stories high, and had fully equipped it with printing and embossing presses, envelope-folding and envelope-cutting machines, and every appliance for the manufacture of stamped envelopes; that it had expended nearly \$200,000 on this plant; that the factory was ready to start at any time within 24 hours after notice is received; that it had superior facilities to those under which its present contract was being operated, and courted the fullest investigation as to its financial responsibility; that it was ready to sign the contract and give the required bond, and urged that the award be made to it (pp. 60, 61). (R. 68.)

## III.

Whether after the award was made, and prior to July 22, 1894, and during the investigation which was instituted by Postmaster General, the Hon. Charles Emory Smith, to which reference is made in Finding XIV of the court, information was officially transmitted to the Postmaster General to the effect,



among other things, that little was known of Mr. Purcell's actual responsibility (p. 29, line 32); that Mr. Townsend had unsatisfied judgments standing against him (p. 29, lines 21, 46), and that his financial standing was not good; that judgments had been entered against Mr. Payn from time to time (p. 29, line 18); that the firm of which he was a member had practically failed, with assets estimated at \$20,000 and liabilities at \$40,000 (p. 29, lines 35-36); that he was said to be slow of payment and not known to have anything that could be reached (p. 29, lines 17, 18). (R. 68.)

#### IV.

Whether, after the award was made and through the investigation instituted by Postmaster General Smith, referred to in finding XIV of the court, official information was transmitted to that officer in the form of a report (pp. 25-30), which, among other things, stated that the Purcell plant at Holyoke, Mass., had been erected for Purcell by the Powers Paper Co., and that the latter was contingently interested in the success of the Purcell company (p. 26, lines 30-33), and expected to supply the latter with a part of the paper (p. 26, line 33); that a mortgage upon the Purcell plant was held by L. J. Powers (father of F. B. Powers, p. 26, line 29) which had cost the Powers's interests over \$90,000 (p. 28, last line, first par.); that the Holyoke City Bank of Holyoke, Mass., would not lend Powers or the Purcell Envelope Co., and did not wish to do any business with them (p. 28, lines 26-28); that the bank had some dealings

with Purcell and Townsend; that Townsend was not satisfactory (p. 28, lines 25, 26); that the Holyoke Savings Bank would not lend them a dollar (p. 28, line 29); that the Holyoke National Bank never had any dealings with the Purcell Envelope Co., but had looked them up about four years ago before and concluded not to lend them, was of the same opinion still (p. 28, lines 42-44); that the Park Bank of Holyoke had a chance to do business with Messrs. Purcell and Townsend, but did not do it, and would not do it now (p. 28, lines 51-53); that the Chapin Bank and the John Hancock Bank of Springfield, Mass., would not give Purcell or his company accommodation unless the paper bore all indorsements (p. 27, lines 43, 44); that at the Second National Bank of Springfield (Mass.) the board would not pass their paper (p. 27, lines 45, 46); that the Springfield National Bank would not give any accommodation unless very satisfactorily indorsed (p. 27, lines 50, 51); that Mr. Purcell's personal check had several times been refused payment because of no funds to his credit (p. 28, lines 1, 2); that Mr. Townsend had an account there, but overdrew it about \$18, and it took two or three months to get it (p. 28, lines 4-6); that in 1896 the general credit of the claimant was not good (p. 29, line 11); that the inspector making the report had heard that two or three of the company's notes had been protested, and there were other rumors concerning its financial standing (p. 27, lines 33-36); that the company consisted of James Purcell, L. F. Payn, H. E. Townsend, and Henry O'Brien, all of whom

lived in the State of New York (p. 26, lines 22-26); that four years ago (1894) the Purcell Envelope Co. made envelopes about a month (p. 27, lines 3 and 4); that during that time it contracted with Mr. Powers for 40 envelope machines; that it accepted and paid for 10; that this was the machinery alleged to have been recently bought (p. 27, first par.); that the Morgan-Plimpton Co. assumed the contract for the other 30 machines, and that the contract was assigned to the latter company by Mr. Purcell; that the Morgan-Plimpton Co. stated that they would hold Powers to that contract, and that he would be compelled to deliver the 30 machines to them before he could make any more for Mr. Purcell (p. 27, pars. 1 and 2); that the Morgan-Plimpton plant was as nearly perfect as it was possible for human ingenuity and business common sense to construct (p. 26, lines 1 and 2), and could turn out nearly, if not quite, 4,000,000 envelopes for each working day (p. 26, lines 17-20). (R. 68-69.)

#### V.

Whether after the award was made, and prior to the date of the order set out in finding XIV, there was transmitted to the Postmaster General official information in the form of a report made by the proper officers of the Post Office Department, as a result of the investigation mentioned in said finding, to which report was attached, as Exhibit A, an affidavit (p. 30, line 39, and pp. 30, 31) purporting to have been made by Clarence Wolf, wherein it was stated, among other things, that the affiant had

been engaged for 20 years in the manufacture of envelopes (p. 30, third line from bottom of page); that on May 28, 1898, he had made a personal examination of the plant of the Purcell Envelope Co., at Holyoke, Mass. (p. 30, last two lines), which was an ordinary commercial plant, not up to present standard in efficiency; that the plant was idle (p. 31, lines 1, 3); that among the machines contained therein 22 were in fair condition and 5 in poor condition (p. 31, line 6); that the affiant found no facilities for making newspaper wrappers (p. 31, lines 7, 8); that he believed the Gordon presses could emboss and print 10,000 each (envelopes) in a day of 10 hours (p. 31, lines 11, 12); that he did not believe the Purcell plant, as then constituted, capable of executing the contract for printing stamped envelopes should the same be awarded to that company (p. 31, lines 27, 29). (R. 69-70.)

## VI.

Whether, after the award was made, and prior to the date of the order set out in finding XIV of the court, there was transmitted to the Postmaster General an official report made by the proper officers of the Post Office Department, as a result of the investigation mentioned in said finding, to which was attached, as Exhibit B, an affidavit (pp. 31-32) purporting to have been made by Joseph F. Roberts, wherein it was stated, among other things, that the affiant was by trade a machinist and an adjuster of envelope machines, and on May 28, 1898, he made a personal examination of the plant of the Purcell

Envelope Co., of Holyoke, Mass.; that, among other machines found therein, there were 10 Leader machines in fair condition, 14 Berlin & Jones machines not in good condition, but could be put in good condition in a month, if enough help was employed; that there were 11 Standard (Piper) machines in fair condition and 5 Ermold machines in fair condition; that affiant estimated that the Gordon presses could each print and emboss 12,000 envelopes in a day of 10 hours. (R. 70.)

#### VII.

Whether in a letter of (Senator) O. H. Platt to Chas. Emory Smith, Postmaster General, Washington, D. C., dated April 25, 1898, it was stated:

I hope you will not sign this contract (which had been awarded to the Purcell Envelope Co. by Postmaster General Gary on Apr. 20, 1898) until you have an opportunity to fully investigate it, both from a business standpoint and as to the influences which have been used to secure it, and that you will, at an early date, give an interview to the parties whom it was decided against (p. 20). (R. 70-71.)

#### VIII.

Whether, in a letter to Plimpton & Morgan companies, by M. S. Chapman, attorney, to Chas. Emory Smith, Postmaster General, dated May 6, 1898, it was stated:

That the stamped-envelope contract—bids for which were opened March 30, 1898—was

positively and legally awarded to us, and that the subsequent award to the Purcell Envelope Co. was not a just or legal award (p. 22). (R. 71.)

## IX.

Whether, on May 6, 1898, Jas. T. Abbe, president, wrote to the honorable the Postmaster General a letter of that date, wherein, among other things, it was stated that the Holyoke Envelope Co., which had submitted a bid for furnishing stamped envelopes and newspaper wrappers to the Post Office Department in response to its advertisement, dated February 28, 1898, the writer had reason to believe that bidders were not treated fairly; that the Holyoke Envelope Co. "was treated \* \* \* with inexcusable unfairness in the Third Assistant Postmaster General's Office" (p. 21). (R. 71.)

## X.

Whether, subsequent to the award, according to statements contained in the report of an officer of the Post Office Department, during the investigation, mentioned in Finding XIV of the court, Mr. Jas. Purcell participated by submitting to that officer certain papers which were attached to the officer's report as Exhibits "C, D, E, F, G, H, I, J, K, L, M, N, O, and P" (p. 39); and also whether or not Mr. Purcell acquiesced in such investigation being made (p. 27, lines 39 and 40; p. 30, lines 23-26 and 38-40). (R. 71.)

## XIX.

Whether Postmaster General Smith, in making the investigation into the facts and circumstances (to which reference is made in Finding XIV of the court) surrounding the making of the award and the entering of the order revoking the same, on July 22, 1898, and notifying the claimant thereof, acted in good faith. (R. 73.)

The Court of Claims failed to make findings of fact on any of the foregoing requests, or to state the ultimate facts with respect thereto.

Wherefore appellant prays that an order be issued herein directed to the Court of Claims requiring said court to make and certify as part of the record here findings of fact on the several questions of fact above set forth.

Appellant also moves the court in the alternative to remand the case to the Court of Claims for such further proceedings as it may direct.

ALEX. C. KING,

*Solicitor General.*

**STATEMENT.**

This suit was brought in the Court of Claims for the recovery of damages for the breach of an alleged contract for furnishing stamped envelopes and newspaper wrappers to the Post Office Department. The amount so claimed in the second amended petition was \$675,000. It is charged that the Postmaster General failed to call upon appellee to furnish any envelopes or wrappers during a four-year period beginning October 1, 1898, thereby causing a breach of the alleged contract. The paper writing which is referred to in the proceedings as the contract "to be entered into" appears in the record as "Claimant's Exhibit A" following the petition (R. 7-29). While this paper was signed by appellee, it was never signed by the Postmaster General (R. 29).

On February 28, 1898, the Postmaster General advertised for proposals for furnishing the Post Office Department with stamped envelopes and newspaper wrappers in such quantities as might be called for by the department during a period of four years beginning October 1, 1898 (R. 8). The specifications stipulated that the contract would be awarded on the basis of the issues in round numbers for the year ending December 31, 1897, or 600,658,000 annually (R. 16), of such envelopes and newspaper wrappers (the number of such issues being the total number of the various quantities mentioned in the specifications).



On March 30, 1898, appellee submitted its proposal for furnishing stamped envelopes and newspaper wrappers in accordance with the specifications for the sum of \$467,206.18, which was based on the number of envelopes and wrappers issued during the year ending December 31, 1897 (R. 19: 45-46, F. III), or 600,658,000 annually (the total of all the issues stated in the specifications), an aggregate during the four-year period of 2,402,633,000 issues, which in conformity with the bid on this basis would make the total contract price ( $\$467,206.18 \times 4$ ) \$1,868,824.72. The court has found that the cost of the paper alone to the appellee would be \$1,845,248.60 (R. 59). The cost of the paper does not include the cost of making and delivering the envelopes, nor the expense to appellee in acquiring the Wickham machines upon which to make them, hereinafter more particularly referred to.

Appellee agreed that in the event of the acceptance of its bid "to enter into contract" as required (R. 46).

On April 20, 1898, Postmaster General Gary accepted appellee's bid, and on the same day the latter was notified that the contract had been awarded to it (R. 49-50, F. IV & V).

On April 21, 1898, a contract in quadruplicate and which had been referred to in the specifications (R. 17, 18, 19) was awarded to the appellee for execution (R. 50). This contract is embodied in the record as "Claimant's Exhibit A" (R. 7-29).

On April 22, 1898, the written contract was signed by appellee and its sureties and returned to the

Third Assistant Postmaster General, but was never signed by the Postmaster General (R. 51, F. VIII, 29).

On April 27, 1898, appellee was notified through the Third Assistant Postmaster General that the Postmaster General had not signed the contract and was holding the matter in abeyance (R. 52). A previous letter, that of April 21, tends to show that negotiations were still in progress (R. 51).

On July 22, 1898, the award of a contract to the appellee was revoked and canceled and declared to be null and void; and all letters and notices from any officers of the Post Office Department addressed to appellee advising it of the award were recalled and annulled. Before this action was taken, however, Postmaster General Smith had instituted an investigation into the business and financial standing of appellee with the result that the report thereon was unfavorable to appellee (R. 53-54, F. XIV).

On July 26, 1898, the Postmaster General entered an order requiring the Plimpton Manufacturing Co. of Hartford, Conn., and the Morgan Company of Springfield, Mass., to furnish all the envelopes and newspaper wrappers which might be required between October 1, 1898, and January 1, 1899. The envelopes and wrappers so purchased were procured under the provisions of section 3709 of the Revised Statutes, authorizing the head of a department to procure supplies by open purchase or contract in case of a public exigency (R. 55-56). The contract so made is referred to herein as the emergency contract.

On October 25, 1898, the Postmaster General duly entered into a written contract with the companies then furnishing envelopes and wrappers to the Post Office Department under the emergency contract for the furnishing of stamped envelopes and wrappers that the Post Office might call for during the four-year period beginning January 1, 1899 (R. 56-58, F. XVII).

During the four years beginning October 1, 1898, both under the emergency contract and under the four-year contract beginning January 1, 1899, the Plimpton-Morgan companies furnished 3,050,237,250 issues of envelopes and wrappers, for which they were paid \$2,460,556.22 (R. 58, F. XVIII).

The Court of Claims rendered judgment against the United States for the sum of \$185,331.76, Chief Justice Campbell dissenting (R. 66). Said judgment purports to represent the profit appellee would have made in furnishing 3,050,237,250 issues, but it is not clear at what prices.

The Government maintains that a contract was never consummated between the parties and was only in the making.

On that question it is submitted that all the requests embodied in the motion are material.

If it should be finally held that an express contract was entered into and consummated, then it is maintained that the several requests become material on the question as to the measure and amount of damages.

The motion is based upon the following grounds:

*First*, that appellant requested the Court of Claims to make findings of fact upon the several questions of fact set forth in the motion.

*Second*, that such questions of fact are material and pertinent to the issues involved.

*Third*, that the Court of Claims failed to make the findings requested, or any of them, or to state any reason for such failure, although there was evidence in support thereof.

The several requests for findings of fact on questions of fact embodied in the motion and presented to the Court of Claims will for the purpose of a limited discussion in our brief be grouped as to subject matter under the following headings:

1. What was the cost of the Wickham Envelope Machines to appellee and was this item included in the cost of the performance of the contract? (Requests 1 and 2 of the motion.)

2. What was the number of envelopes and wrappers upon which the court based its judgment for anticipated profits? (Requests 3 and 4 of the motion.)

3. What amount, if any, was deducted from the cost for release from risk attending execution of the contract? (Request in paragraph 5 of the motion.)

4. What misrepresentation on the part of appellee, if any, did the investigation, conducted by Postmaster General Smith after the award, disclose? (Requests I to X, inclusive, and XIX of the motion.)

## I.

What was the cost of the Wickham envelope machines to appellee and was this item included in the cost of the performance of the contract?

The court erred in failing to make findings of fact responsive to requests 1 and 2 of the motion, relative to the cost of Wickham machines to appellee, as an incident to the performance of the contract, although evidence of the cost was submitted to the court. (R. 74-75, XXIII, 5, 8.)

The court erred in failing to include in the cost, incident to the performance of the contract by appellee, any sum which it would have necessarily incurred in purchasing or acquiring the Wickham machines.

In order to supply 3,050,237,250 envelopes and wrappers during the four years beginning October 1, 1898 (R. Finding XVIII) it would be necessary to manufacture the same at the rate of approximately two and one-half millions per day, which could only be done on the Wickham machines.

The court has found that appellee contemplated making the envelopes on the Wickham machines (R. 53, Finding XI), which made the envelope in one operation (R. 44-45, Finding I) and was the latest machinery for such work (R. 53, Finding XII). At the time in question the plant of another company located at Hartford, Conn., was the only one in the United States equipped with the Wickham machines (R. 44-45, Finding I). Appellee's plant was not equipped with them, but with "ordinary envelope folding machines" (R. 44, Finding I; R. 53, Finding XII).

Hence there was the necessity of purchasing or acquiring the Wickham machines by appellee. The cost of the Wickham machines would necessarily be large. It is not accounted for, either in the judgment or referred to in the findings. The court was therefore requested to find the number of these machines required to do the work and the cost to appellee. The court was also requested to state whether or not it had included in the cost of materials, or otherwise, the cost of these machines to appellee, and, if so, what amount.

The request called for material facts, since the Wickham machines would have been necessary in the performance of the contract in question, and appellee's theoretical profits ought to be reduced in an amount equal to the cost of the Wickham machines, or at least a fair rental value thereof during the period of the contract. There is nothing in the present findings, or in the amount for which judgment is rendered, tending to show that the cost of the Wickham machines is estimated as an item in the damages awarded, and, if so, what amount. (*United States v. Smith*, 94 U. S. 214, 218.)

## II.

**What was the number of envelopes and wrappers upon which the court based its judgment for anticompeted profits?**

The court erred in failing to make findings on the foregoing questions of fact presented in paragraphs 3 and 4 of the motion. It should have done so, as the award was upon the basis of furnishing in round numbers 600,658,000 issues annually (the total num-

ber per year set out in the advertisement, R. 16). Appellee's bid of \$467,206.18 (R. 19) was also submitted upon the basis aforesaid, or for (600,658,000 x 4) 2,402,633,000 envelopes and wrappers during the period of four years, beginning October 1, 1898. A judgment based upon the furnishing of 3,050,237,250 (F. XVIII) envelopes and wrappers is in excess of the amount just stated and would be erroneous, for the reason that the department could not have been compelled to take more than the quantity specified in the advertisement, and for which appellee submitted its bid.

The total cost for the quantity of envelopes so specified, on the basis of appellee's bid therefor, could not have exceeded ( $\$467,206.18 \times 4$ ) \$1,868,824.72. The court, therefore, erred in fixing the contract price, in its judgment, at \$2,275,224.46 (R. 59, F. XX).

Hence the request of the court (R. 75, XXV) to state the number of issues upon which the judgment was based. The language employed in the specifications (R. 16) limits that language in the contract (R. 20) for furnishing envelopes and wrappers in such quantities "as may be called for by the Post Office Department," and makes the maximum that the Government could have been compelled to take the amount estimated per year times the number of years of the contract period, or 2,402,633,000, instead of 3,050,237,250, the number upon which the judgment is inferentially based. (*Merriam v. United States*, 107 U. S. 437, 444.)

It appears from the present findings that while the award had been made by the Postmaster General (R. 49, F. IV) an investigation was afterwards made into the business and financial standing of the claimant, and the report thereunder was unfavorable; that thereupon the award was canceled (R. 53-54, F. XIV). The Postmaster General then entered into an emergency contract with other companies under the provisions of section 3709 of the Revised Statutes relating to the authority of any department of the Government, in case of public exigency, to procure supplies by open purchase or contract. The existing contract for envelopes expired by limitation on September 30, 1898. Under the emergency contract the contractors were ordered to furnish "all the stamped envelopes and newspaper wrappers which may be required by the Post Office Department between October 1, 1898, and January 1, 1899." (R. 55.)

The emergency purchase could form no basis for a claim against the United States by appellee, especially if the number so purchased was in excess of the quantities stated in the specifications. Inferentially, the court has included as the basis of its judgment all the envelopes and wrappers that were purchased under the emergency contract, as well as all others purchased during the four-year period. The court was therefore requested to state whether the basis of its judgment included the issues of envelopes and wrappers purchased under the emer-



gency contract, and if so, how many issues were so included (R. 75, XXV, 2). Where there is an outstanding contract for envelopes, the Postmaster General has the right to enter into an emergency contract during the same period, but he can not charge the excess cost thereunder to the four-year contractor.

*The Plimpton Mfg. Co. v. United States*, 15 C. Cls. 14; 21 A. G. Op. 181.

For a similar reason the contractor can not appropriate to his benefit the subject matter involved in an emergency contract growing out of a public exigency as a basis for a valid claim.

### III.

**What amount, if any, was deducted from the cost for release from risk, etc., attending the execution of the contract?**

The court erred in failing to make a finding of fact on the foregoing questions of fact. (Par. 5 of the motion.)

The court erred in failing to make a reasonable deduction from the amount of the judgment by reason of appellee's release from care, trouble, risk, and responsibility attending the performance of a contract.

Besides the risks, etc., which the law contemplates, the contract itself gives notice of a variety of hazards that may be encountered. The sizes and qualities of the envelopes were subject to discontinuance, in which event the contractor was not entitled to any compensation for damages. The Postmaster Gen-

eral reserved the right to impose fines upon the contractor for failure to have on hand at any time a sufficient supply of envelopes with which to promptly meet all requisitions of the department. If the contractor failed to promptly furnish the same he was liable for the excess cost incurred by their purchase in the open market. For any such failure the contract might be annulled. (Rec. p. 28, pars. 7, 9, 11.)

The face of the record does not disclose any deduction from the judgment by reason of appellee's release, etc., from the performance of a contract. The Government maintains that it was proper to request the court to state whether the rule in this regard had been complied with, and if so, the amount deducted.

*United States v. Speed*, 8 Wall., 77-84.

*Insley v. Shepard*, 31 Fed., 869, 873.

*Mc Master v. The State of New York*, 108 N. Y., 542, 543.

*Danforth v. Tennessee & Coosa R. R. Co.*, 93 Ala., 614, 620.

#### IV.

**What misrepresentation on the part of appellee, if any, did the investigation conducted by Postmaster General Smith disclose?**

The court erred in failing to make findings of fact on the questions of fact embodied in requests I to X and XIX of the motion.

The 11 requests grouped under this heading tend to support five propositions constituting a part of the *res gestæ* and were relevant, first, for the pur-

pose of ascertaining whether or not appellee's officers prior to the award and for the purpose of securing the same had made certain representations to the Postmaster General concerning the financial responsibility of the company, its officers and stockholders, and also as to the capacity and equipment of their plant and what had been expended thereon. A statement of fact in this regard was sought by requests I and II. By the latter request, among other things, the court was asked to find whether prior to the award appellee had represented that it "then had machinery in place guaranteeing a product of over two and one-half million envelopes daily."

Even in a case where there is a state, or group, of evidentiary facts, the legal effect of which may be doubtful, the lower court should when requested put such questions into the record (*United States v. Pugh*, 99 U. S. 265, 270), and for a stronger reason should do so when a fact requested to be found involves an alleged misrepresentation vitally affecting the transaction.

And, second, for the purpose of ascertaining whether or not Postmaster General Gary had not been misled and deceived by certain representations made by appellee prior to the award, it was sought by requests III to IX, inclusive, to ascertain the ultimate facts with respect to appellee's actual financial standing and that of its officers, as well as the real condition of their plant, its capacity and equipment, the result of this investigation having been referred to in Finding XIV of the court. (R. 54.)

Third. Requests VII, VIII, and IX were designed to ascertain whether or not public officials and competitive bidders had lodged complaints with the Postmaster General soon after the award wherein it was claimed that the same was legally made to a competitive bidder and that the award to appellee "was not just or legal"; that other bidders had been treated "with inexcusable unfairness in the Third Assistant Postmaster General's office"; and further, whether the Postmaster General was requested or invited by a high public official to investigate "the influences which had been used to secure" the award. These charges, if true, were sufficient to vitiate the award of a contract to appellee.

The facts, complaints, and charges laid before the Postmaster General after the award, if the court had found such to be the fact, were sufficient to authorize that officer to make the investigation referred to in Finding XIV. If he found them to be true, or if they had the effect of showing the falsity of material representations made by appellee before the award and for the purpose of securing the same, then the Postmaster General was acting within his rights and powers in the premises, and was warranted in setting aside or vacating the award to appellee. Such a situation would tend to show that the action of the the Postmaster General was not "without any just, legal, or reasonable cause," as charged in the petition. (R. 5.)

Fourth, by request numbered XIX, the Court of Claims was asked to state whether or not the Post-

master General in making the investigation above referred to and in revoking the award was acting in good faith.

In *United States v. Ripley*, 220 U. S., 491, the acts of a public officer were challenged on a given state of facts. The case was remanded for the purpose of ascertaining whether or not his action was in good faith.

Fifth, by Request X, the court was asked to find another fact connected with the investigation referred to in Finding XIV of the court. Such fact related to the conduct of appellee's president during the investigation and as to whether or not that officer acquiesced and participated in the investigation made by the Postmaster General. The object of this request was threefold:

(a) That the investigation was both proper and justified.

(b) That the contemplated contract had not been consummated.

(c) That appellee's chief executive after the award was endeavoring to persuade the Postmaster General to make or enter into a contract and to convince that officer that it would be able to execute it, notwithstanding the facts laid before the Postmaster General to the contrary.

APPELLANT'S MOTION IS WELL TAKEN.

Every party to an appeal has a right to have all the material ultimate facts, established by the evidence, found by the lower court. Where it is shown

upon appeal that material facts have been presented but not acted upon by the Court of Claims the case will be remanded for findings of fact sustained by the evidence.

*United States v. Adams*, 9 Wall., 661;  
*Mayham v. United States*, 14 Wall., 109;  
*United States v. Pugh*, 99 U. S., 265;  
*Driscoll v. United States*, 131 U. S. App.  
 CLIX.

The court will, sometimes of its own motion, remand a case to the Court of Claims for additional findings of fact.

*United States v. Ripley*, 220 U. S., 491; 222 U. S., 144.

The facts which are the subject of appellant's motion for additional findings were duly presented to the court, but the court overruled the motion. (R. 66-71, Requests I to X, inclusive. R. 73, Request XIX. R. 74, Request XXIII, pars. 5, 8. R. 75, Request XXV. R. 76, Request XXIX.)

#### CONCLUSION.

It is respectfully submitted that the order herein prayed for should be granted and the case remanded for further proceedings.

ALEX. C. KING,  
*Solicitor General.*

HUSTON THOMPSON,  
*Assistant Attorney General.*

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FILED

JAN 9 1919

JAMES D. MAHER,  
CLERK.

No. 168.

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1918

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THE UNITED STATES, APPELLANT

v.

THE PURCELL ENVELOPE COMPANY,  
APPELLEE

---

APPEAL FROM THE COURT OF CLAIMS

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Appellee's Memorandum in Opposition to  
Appellant's Motion for an Order on the  
Court of Claims to make and certify  
findings of fact.

ARTHUR BLACK,  
*Attorney for Appellee*

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# Supreme Court of the United States

OCTOBER TERM, 1918.

No. 168.

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UNITED STATES, *Appellant*,

v.

THE PURCELL ENVELOPE CO., *Appellee*.

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APPEAL FROM THE COURT OF CLAIMS.

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## APPELLEE'S MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION FOR AN ORDER ON THE COURT OF CLAIMS TO MAKE AND CER- TIFY FINDINGS OF FACT.

The above case has been pending since 1902. After years of exhaustive preparation by both sides, argument of the case was begun in the Court of Claims on April 12, 1911, and continued for two days. The testimony required eight hundred pages of the Record and the brief of counsel for the United States, three hundred and fifty pages additional. The Court of Claims decided the case on December 4, 1911. The facts were found in detail and from this finding the Court decided as a conclusion of law that the claimant was entitled to recover from the United States

the sum of \$185,331.76 and judgment for the claimant was entered accordingly (R. 43).

Motion for new trial was filed by the United States, based upon the ground therein alleged of newly discovered evidence. That motion was granted January 6, 1913 (R. 43).

More than three years after the new trial was granted, during which time counsel for the claimant made every effort to speed the proceedings, the case was again argued before the Court of Claims, March 30-31, 1916. About seventy-five pages of new testimony was considered in addition to the eight hundred pages of testimony taken before the first trial. A new counsel for the United States submitted a new brief of more than three hundred pages, in which all the defences of his predecessor were set up, together with such new ones as his own ingenuity could devise.

The argument required two days, and the Court of Claims, on April 14, 1916, made a complete finding of facts, on which it again decided, as a conclusion of law, that the claimant was entitled to recover from the United States the sum of \$185,331.76, and judgment was entered accordingly (R. 66).

Again counsel for the United States, on June 13, 1916, filed a motion for a new trial and for amended and additional findings of fact (R. 66).

On December 18, 1916, this motion was denied (R. 66).

Thereafter, on January 4, 1917, counsel for the United States filed an application for the allowance of an appeal to the Supreme Court of the United States, but did not submit the same to the Court for action for three months. On March 6, 1917, the appeal was allowed.

On April 2, 1917, the Court of Claims allowed the United States to incorporate in the Record on Appeal its motion of June 13, 1916, which had been denied on December 18, 1916.

Now the latest counsel for the United States (the third in number) asks this Court to remand the case to the Court of Claims for further proceedings, and he bases this motion on the alleged necessity of having certain additional findings of fact in the Record on Appeal.

This motion, now made two years after the application for the allowance of an appeal to this Court, and presented on the eve of argument on the merits of that appeal, deserves no consideration. It is without merit, and if allowed can serve no purpose but delay.

### REASONS.

I. The Court of Claims is the trial court on matters of this kind. On its findings of fact this Court must depend. This Court is not qualified, without consideration of all the testimony, to pass upon the findings of the trial court.

II. The subject-matter of the requests on which this motion rests has been discussed at great length in all the briefs and in all the oral arguments of all the counsel on both sides and at both trials. The requests contain not one idea that is new to counsel or to the Court of Claims. The subject-matter thereof, in so far as competent, material, and relevant, has already been found by the Court of Claims, and additional matter ignored.

III. These requests were submitted verbatim to the Court of Claims as the basis of a motion for a new trial, and additional findings of fact, and that Court fresh from the last trial, with the fullest possible knowledge of the case gained from two trials, innumerable motions, and the preparation of two decisions, denied a new trial and refused to make further findings of fact (R. 66).

The statement is made in the foregoing paragraph that "these requests were submitted verbatim to the Court of

Claims." This can be verified by a glance at the Record on Appeal, pages 67 to 76 inclusive. Requests in the motion before this Court, numbered by Arabic numerals 1 to 5, are identical with requests contained in the previous motion to the Court of Claims as they appear in the Record on Appeal as follows:—

*Requests to Supreme Court. Requests to Court of Claims.*

1	same as	XXIII sub. 8	see R. 75.
2	" "	XXIII sub. 5	" R. 74.
3	" "	XXV sub. 1	" R. 75.
4	" "	XXV sub. 2	" R. 75.
5	" "	XXIX	" R. 76.

Requests in the motion before this Court, numbered by Roman numerals I to X inclusive, and XIX, are identical with requests contained in previous motion to the Court of Claims, as they appear by the same Roman designations in the Record on Appeal, pages 67 to 71 inclusive, and page 73.

IV. These requests, which did not warrant any action by the Court of Claims, gain nothing in presentation to this Court by a mere rearrangement of their sequence.

It is respectfully submitted that this motion should be denied.

ARTHUR BLACK,

*Attorney for Appellee.*

# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES, APPELLANT,	} No. 168.
v.	
THE PURCELL ENVELOPE COMPANY, AP- pellee.	

APPEAL FROM THE COURT OF CLAIMS.

## SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

If it should be held that a contract was, in fact, entered into and breached by the Postmaster General, then it will be confidently insisted that the Court of Claims has applied an entirely erroneous rule of damages. And, in support of this contention, the court's attention will now be further directed to certain features of the contract as alleged and as found by the Court of Claims.

### I.

**Contract not for all stamped envelopes and wrappers needed during the period of the contract, but only for such as the Postmaster General should see fit to order from the appellee.**

The Court of Claims has awarded damages on the theory that appellee had a contract which entitled it to furnish all the stamped envelopes and wrappers, of the sizes mentioned in the specifications, which the Post Office Department *should need* during the

four years' contract. But this construction of the contract finds no support, either in the claimant's petition, in the written contract which it signed as embodying its final understanding, or in any of the papers or orders preceding the signing of the contract. Appellee, when stating in its petition the substance of the contract, does not allege that the Postmaster General contracted to order from it all of those articles that might be needed. On the contrary, the allegation is that the claimant undertook, covenanted and agreed "to furnish and deliver, promptly as ordered, and subject to the approval of the Postmaster General, all the stamped envelopes and newspaper wrappers *that it might be called upon* by the Post Office Department to furnish during the four years," etc. (Rec. p. 1.)

In asking for bids the Postmaster General clearly had in mind the same idea, since he asked for proposals "for furnishing stamped envelopes and newspaper wrappers in such quantities as may be called for by the department during a period of four years," etc. (Rec. p. 45.) And in the written contract signed by appellee a recital of the advertisement for bids, the submitting of bids, and the awarding of the contract, is followed by the covenants entered into by the appellee, the first of which is—

That the said contractor shall furnish and deliver promptly and in quantities as ordered, and subject to the approval of the Postmaster General in every respect, all the stamped envelopes and newspaper wrappers *that it may be called upon* by the Post Office Department

to furnish during the four years, etc. (Rec. p. 20.)

The eighth paragraph of the contract requires the contractor to keep on hand at all times a stock of finished envelopes and wrappers equal to an average ten days' supply. (Rec. p. 24.) The obligations to be assumed by the United States begin on page 25 of the record. They contain no obligation to order any particular quantity of the articles mentioned from the appellee. The obligation is simply—

To pay the said contractor for the stamped envelopes and newspaper wrappers accepted and delivered in pursuance of this contract, subject to the reservation hereinafter stated, at the following rates, which shall be full compensation for everything required to be done or furnished as herein set forth \* \* \*. (Rec. p. 25.)

“The reservation hereinafter stated” is as follows:

That the department shall, after satisfactory inspection, accept and pay for, at the regular contract prices, the stock of stamped envelopes and wrappers that may remain on hand at the close of the contract term; and the contractor may be required to issue them subject to the conditions of the contract, but provided that such stock shall not exceed in quantity the average requirements of the department for a period of fifteen days; and any surplus over that quantity may be destroyed, at the discretion of the Postmaster General, without any compensation therefor. (Rec. p. 28.)

It is true that the specifications on which the proposal was submitted provided that "The contract will be awarded on the basis of the issues, in round numbers, of corresponding sizes and qualities, for the year ending December 31, 1897, as follows:" This was followed by a statement showing the number of each of the fourteen articles on which bids were asked which had been issued during the year 1897. The specifications, however, make it plain that there is to be no contract to take these or any other quantities annually during the four years. On the contrary, it is simply specified that these figures shall be used as a basis by the Postmaster General in determining which proposal in the aggregate is the best. The language used is:

Bids must be made separately for every size and quality of stamped envelopes and wrappers in the foregoing list, the bidder stating in his proposal the price per thousand envelopes and wrappers, including everything required to be done or furnished, as set forth in these specifications, and the contract will be awarded as a whole to the lowest responsible bidder in the aggregate—the amount of the bid to be ascertained by extending the above numbers at the prices bid respectively, and then aggregating the amounts. It must be understood, however, that any proposal made under the advertisement and these specifications shall impose the obligation to furnish at the prices bid all the envelopes and wrappers that may be ordered by the department during the contract term without regard to the quantities above given, subject to the provision as to those on hand at



the termination of the present contract. (Rec. p. 17.)

It is perfectly plain, then, that the substance of the contract was that the appellee should be required to keep on hand at all times enough to meet the average requirements of the department for a period of ten days, and that in return for this undertaking and as a protection to the appellee the Government bound itself to take any stock that remained on hand at the end of the period, not exceeding enough to meet the average requirements of the department for fifteen days, and, in addition, the appellee undertook to fill all orders which the department might give it at the prices fixed in the contract. To fully comply with its contract the appellee was not bound to have on hand at any time more than a ten days' supply. If it manufactured more, with the result that it would have on hand more than fifteen days' supply at the end of the period, it did so at its own risk.

It is respectfully submitted that nothing can be found in the contract justifying the conclusion that the Government bound itself to take from the appellee at any time, or during the entire contract period, more than fifteen days' supply. If it had been permitted to go on with the contract, appellee might have been given very large orders and thus made large profits, but it could not have forced the giving of orders in excess of fifteen days' supply. In other words, the Government contracted to take, at all events, this limited quantity, with the option on its part to take as many more as it might see fit to order.

## II.

**Appellee entitled at most to the expenses incurred in getting ready to perform the contract and to the profits it would have derived from the manufacture and sale of fifteen days' supply of the articles contracted for.**

This is not a case of partial performance by one party and a breach of contract by the other. It is a case where one party has prevented the other from performing. The case of the *United States v. Behan* (110 U. S. 338, 344) clearly lays down the rule of damages in such a case as follows:

The *prima facie* measure of damages for the breach of a contract is the amount of the loss which the injured party has sustained thereby. If the breach consists in preventing the performance of the contract, without the fault of the other party, who is willing to perform it, the loss of the latter will consist of two distinct items or grounds of damage, namely: first, what he has already expended towards performance (less the value of materials on hand); secondly, the profits that he would realize by performing the whole contract. The second item, profits, can not always be recovered. They may be too remote and speculative in their character, and therefore incapable of that clear and direct proof which the law requires.

As to the profits, the appellee, of course, can recover only those which it would have derived from doing what, under the terms of the contract, the other party had no right to prevent it from doing. It had the right to manufacture enough articles to

supply the needs of the department for fifteen days, and if it had done so, the Government would have been bound to pay for them. At most, therefore, it is entitled to recover what its profits would have been on this number of articles. But since the contract does not obligate the Government to take and pay for more than this number, the Postmaster General could have performed the full obligation of the Government by ordering that number. Since the number that it would have manufactured if it had gone on with the contract was entirely dependent upon the will of the Postmaster General, it can not be said, with any degree of certainty, that it would have derived any profit in excess of what would have been derived from the manufacture of the number mentioned. It can not be doubted that the Postmaster General had the authority to make a contract in this form. There is no statute which requires him to make an exclusive contract for any period with a single contractor for supplies of this kind. He is prohibited from making a contract of any kind for a period exceeding four years, but there is no other limitation upon the kind of contract which he shall make.

The act of June 26, 1906 (34 Stat., c. 3546, pp. 467, 476), after providing for the extension of certain contracts then existing, provides that "thereafter the Postmaster General shall contract, for a period not exceeding four years, for all envelopes, stamped or otherwise, designed for sale to the public, or for use by the Post Office Department, the postal service, and other Executive Departments."

The only other limitation upon his right to contract is that, except in an emergency, purchases shall be made by advertising for proposals, as provided in section 3709 R. S., as follows:

SEC. 3709. All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service.

While he is required to advertise for proposals, he is not bound to accept the lowest bid, but may consider other things in determining which bid should be accepted. Under these statutory provisions he need not, therefore, make an exclusive contract with anyone. He may, if he thinks best and can secure satisfactory prices, contract with half a dozen contractors, for each to furnish all the articles that he may call for, and then place his orders as the public interest may require. It may, in fact, be the part of wisdom for him to do this. If advantageous prices can be secured, it may be well to have similar contracts with different contractors, so that if one proves unsatisfactory the orders may be placed with another without disturbing the usual routine of business. He may make these contracts with each for limited quantities to be furnished during the period of a month, a year, or any other period not exceeding four years. Each contract may be for a definite quantity only, or he may

attach to each an option to take an additional quantity if he sees fit. The obligation of the Government will, in either case, be fully performed by taking the definite quantities contracted for. And if, during the contract periods, market and other conditions change to the extent that the prices become excessive, the Postmaster General need not exercise his option to take the additional quantities, but may advertise for new proposals and make new contracts for his needs in excess of the definite quantities already contracted for. If any large outlay will be necessary to enable the contractor to produce the articles contracted for, and if this outlay will be useless for other purposes in the event he does not get a given number of orders, it may be foolish for him to enter into such a contract, but the courts can not assume to protect people against their own foolish or unwise contracts, and if one enters into a contract of this kind he is bound by it.

If it could be said that the law does not authorize contracts of this kind, the result would not avail the appellee anything. Neither it nor the Postmaster General attempted to make any other kind of a contract. If the contract that would have been made by the final execution of the paper signed by appellee was beyond the power of the Postmaster General to make, there was no contract, and appellee can not recover.

For the reasons stated, it is earnestly insisted that in no view of this case did the appellee ever have a contract under which the Government was bound to

take from it more than fifteen days' supplies of stamped envelopes and wrappers. This being true, there is no ground upon which it can claim more than its actual expenses and the profits that would have been derived from manufacturing this limited number of the articles contracted for. It follows that the conclusion of the Court of Claims that the appellee is entitled to recover all of the profits that it would have derived from meeting all the needs of the Post Office Department for articles of this kind during the period of four years is erroneous as a matter of law.

If there was nothing more than the petition alleges, an undertaking on the part of appellee to furnish all the stamped envelopes and newspaper wrappers that it might be called upon by the Post Office Department to furnish, the contract would clearly be no contract at all, because void for want of consideration and mutuality.

A contract for the future delivery of personal property is void, for want of consideration and mutuality, if the quantity to be delivered is conditioned by the will, wish, or want of one of the parties.

*Cold Blast Transportation Co. v. Kansas City Bolt & Nut Co.*, 114 Fed. Rep. 77, 81.

*American Fine Art Co. v. Simon*, 140 Fed. Rep. 529.

*American Cotton Oil Co. v. Kirk et al.*, 68 Fed. Rep. 791.

*Velie Motor Car Co. v. Kopmeier Motor Car Co.*, 194 Fed. Rep. 324.

*Oakland Motor Car Co. v. Indiana Automobile Co.*, 201 Fed. Rep. 499.

*Bulkley v. United States*, 19 Wall. 37.

*McCaw Mfg. Co. v. Felder*, 115 Ga. 408.

If there was a valid contract at all, it was because the Government was bound to do something which could serve as a consideration for the things which appellee bound itself to do. As we have seen, however, the Government did not attempt to obligate itself to order any envelopes from the appellee, except as such an obligation may be inferred from its agreement to take and purchase not exceeding fifteen days' supply if appellee should have that much in stock at the end of the contract period. In view of this agreement the contract which the Government at one time intended to enter into, and which the appellee claims it did enter into, was simply this: The appellee agreed to keep on hand at all times as much as ten days' supply, and in addition to furnish all the envelopes and wrappers which the Postmaster General might call on it to furnish during a period of four years. The Government, on its part, agreed to pay for all such envelopes and wrappers as it should order and as should be delivered to and accepted by it, and, in addition, to take and pay for not exceeding fifteen days' supplies if on hand at the end of the contract period. In short, the Postmaster General contracted to take and pay for, during or at the end of the four-year period, fifteen days' supply, which appellee agreed to furnish, with the option on the part of the Government to take, and the obligation on the part of appellee to

furnish, such additional quantities as the Postmaster General might see fit to order.

It may be that these agreements on the part of the Government constituted a sufficient consideration to bind the appellee to perform its agreements, including that to furnish all envelopes and wrappers that might be called for. But assuming this to be true, each party could recover damages only for a breach of one or more of the agreements made by the other party. Thus, if the appellee failed to have on hand at any time ten days' supplies, or failed to fill any order given it, the Government could recover as for a breach of contract.

On the other hand, if the Government failed to pay for any of the articles accepted by it, or failed to take and pay for stock which it had agreed that it would take at the end of the contract period, the appellee would have the right to recover damages, but it could not recover on account of the failure of the Government to give it other orders, for the reason that the Government had assumed no such obligation.

What has been said is in accord with the construction which this court has put upon contracts as to which it could be much more plausibly argued than in the present case that they called for specific quantities.

In the case of *Merriam v. United States* (107 U. S. 437, 439, 444) there were contracts with the same party calling for the delivery of 1,600,000 pounds of oats, more or less, "or such other quantity,



more or less, as may be required from time to time for the wants of said station, between the first day of July, 1877, and the thirty-first day of December, 1877, in such quantities and at such times as the receiving officer may require." The oats called for were for use at a military station. The contractor furnished and the Government accepted the full 1,600,000 pounds, but during the time specified, additional quantities were needed and used at the station in question, and these were purchased from another contractor. The first contractor sued for damages, claiming that under his contract he had the right to furnish these additional quantities. It will be seen that the language used in the contract was somewhat ambiguous. The additional quantities to be furnished were such "as may be required from time to time for the wants of said station." This standing alone would probably be sufficiently definite and certain. The court, however, held that it was rendered uncertain and indefinite by the provision that the oats should be furnished "in such quantities and at such times as the receiving officer may require," the conclusion being stated in this language:

The provision that the oats required for the wants of the station, over and above the quantity specifically mentioned in the contract, were to be delivered in such quantities and at such times as the receiving officer might require, may well be construed to leave with him a discretion to call for the additional oats or not, as in his judgment they were or were not neces-

sary for the wants of the station; and if he required none, the appellant was bound to deliver and the United States to receive none.

In *Lobenstein v. United States* (91 U. S. 324, 325) the contract was to skin the beef cattle slaughtered for Indians at Fort Sill, and in consideration thereof to receive the hides at \$2.00 per hide. The contract provided:

That the said party of the second part shall have all the hides of beef cattle slaughtered for Indians at Fort Sill, Indian Territory, up to and including June 30, 1870, which the Superintendent of Indian Affairs at that place shall decide are not required for the comfort of the Indians; the number of hides to be about four thousand (4,000), more or less.

Later the Commissioner of Indian Affairs directed that the cattle should all be turned over to the Indian agent on the hoof and given out to the Indians, by whom they were killed and cut up. The result was that no cattle were slaughtered for the Indians at Fort Sill by anyone acting under the authority of the United States, and the contractor, therefore, obtained no hides, although he had gone to an expense in excess of \$1,200 in preparing to carry out his contract. He sued for damages, but this court said:

There was no obligation on the part of the United States to slaughter the cattle or any portion of them for the Indians; and they were only bound to deliver the hides of such as they did slaughter, in case the Superintendent of Indian Affairs did not decide that they were required for the comfort of the

Indians. If he decided that all were required by the Indians, that excused the United States from delivery to Lobenstein. He did, in effect, so decide when the Commissioner directed that the cattle should all be delivered on foot. Lobenstein took this risk when he entered into the contracts, and he undoubtedly made his calculations of profits in case of success accordingly. (p. 329)

It is probably true in the present case that there was an expectation that the figures given for the year 1897 would probably approximate what might be called for in subsequent years. This court has said, however:

There is a well-recognized distinction between the expectation of the parties to a contract and the duty imposed by it. Were it not so the expectation of results would be always equivalent to a binding engagement that they should follow.

*Knox v. Lee*, 12 Wall. 457, 548.

*Maryland v. Railroad Co.*, 22 Wall. 105.

This principle is illustrated in the case of *Lobenstein v. United States*, *supra*. In that case the contract stated in so many words that "the number of hides to be about four thousand (4,000), more or less." Undoubtedly, then, it was the expectation of both parties that the number of hides received would be approximately 4,000, but the court said (p. 330):

The estimate of the number of hides as made in the contracts does not create an obligation on the part of the United States to deliver that number. That estimate was undoubtedly in-

tended as a representation of the probable number of cattle that would be delivered to the Indians. In point of fact, the number actually delivered was very much less. Neither party could determine how many would be reserved by the Commissioner for the use of the Indians. Therefore, necessarily, when the contract was made, the number specified could not have been understood to be a guaranteed number. If that number or its approximation was not guaranteed, none was. It follows as a consequence that this claimant has no right of action. He took his risk, and insured himself in his anticipated large profits if his venture proved a success.

In the present case, whatever expectations may have been entertained, the contract does not contain any obligation on the part of the Government beyond that above stated.

It is therefore respectfully submitted that the Court of Claims was in error in allowing as damages the profits which appellee would have made if the Postmaster General had seen fit to order from it all the envelopes and wrappers which were purchased by him during the period of four years. The appellee, therefore, at most, is entitled to recover only the expenses, if any, it incurred in preparing to perform the contract, and the profits, if any, it would have derived from manufacturing fifteen days' supply of the articles contracted for.

Respectfully submitted.

WILLIAM L. FRIERSON,  
*Assistant Attorney General.*

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# Supreme Court of the United States

OCTOBER TERM, 1918.

No. 168.

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THE UNITED STATES, *Appellant*

v.

THE PURCELL ENVELOPE COMPANY, *Appellee*.

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APPEAL FROM THE COURT OF CLAIMS.

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BRIEF FOR APPELLEE.

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STATEMENT.

The facts in this case are fully set forth in the Findings of the Court of Claims (I to XX, see R. 44-59). Briefly stated they are as follows:—

The Appellee is a corporation organized under the laws of New York for the purpose of manufacturing envelopes. On February 28, 1898, the Postmaster General, acting for the United States, published an advertisement inviting proposals for furnishing all the stamped envelopes that might be called for by the Department during a four-year period beginning October 1, 1898 (R. 45). In response to this advertisement and in compliance with its terms the Appellee made a bid. Its bid was the lowest received,

and on April 20, 1898, the Postmaster General (Hon. James A. Gary), after investigating the business standing of the Appellee, made and entered Order No. 149, awarding the contract to the Appellee (R. 49). On the same day a copy of the order of award was mailed to the Appellee. On the next day, April 21, 1898, a contract in quadruplicate was sent by the Department to the Appellee with instructions to execute at once and return (R. 50). On this same day, April 21, 1898, the Department wrote the Appellee and gave detailed instructions for new designs to be used in printing the stamps (R. 51). On April 22, 1898, the Appellee executed the contract furnished by the Department, procured the Fidelity & Deposit Company of Maryland as surety to the amount of \$200,000, and returned the contract, with the signature of the Surety, to the Department (R. 51).

On April 27, 1898, the Appellee notified the Department that it had contracted for its white and amber paper and had arranged for drawings (R. 51, 52). On the same day the Department notified the Appellee that the contract had not been signed by the Postmaster General and directed it to suspend action until further orders (R. 52).

After the award, and the mailing of the contract to the Appellee for execution, Postmaster General Gary was replaced by Hon. Charles Emory Smith. The contract was never signed by the Postmaster General, but on July 22, 1898, the new Postmaster General, Charles Emory Smith, issued Order No. 301 in which he declared his predecessor's Order No. 149, awarding the contract to the Appellee, null and void (R. 53).

The Appellee is the sole owner of the claim which is the subject of this action. No assignment of any part of it or interest therein has been made (R. 53).

On April 23, 1902, the Appellee brought suit in the Court of Claims. The case has been tried twice before the Court of Claims, which has on both trials awarded



the Appellee judgment against the United States for \$185,331.76 (R. 43 and R. 66).

The case now comes before the Court on appeal by the United States.

Three questions are presented for consideration:—

1. The contract.
2. The breach.
3. The damages.

#### POINT I.

##### The Contract.

A valid and express contract was made between the Purcell Envelope Company and the United States on or about April 20, 1898, whereby the Purcell Envelope Company agreed to furnish all the stamped envelopes and newspaper wrappers which the Post Office Department might call for during a period of four years beginning on October 1, 1898, and for which the United States agreed to pay certain specified prices per thousand.

The documentary evidence of this contract, as found by the Court of Claims, is as follows:—

1. The advertisement for proposals (Finding II, R. 45).
2. The Appellee's proposal (Finding III, R. 45, 46, 47, 48, 49).
3. Order No. 149, awarding contract (Finding IV, R. 49).
4. Notice of the award (Finding V, R. 50).
5. Letter sending formal contract (Finding VI, R. 50).
6. Letter of instructions as to performance of contract and specifications (Finding VII, R. 51).

7. Copy of contract (R. pages 7 to 29) which was executed by Appellee and Surety, with a penalty of \$200,000 for the performance (Finding VIII, R. 51).
8. Appellee's letter notifying Department of arrangements made for paper and drawings (Finding IX, R. 51-52).
9. Letter of Department ordering suspension of performance (Finding IX, R. 52).

There being no dispute as to the foregoing facts the only question is one of law. Do these facts constitute a contract?

The award of a contract by the Postmaster General, pursuant to an advertisement by him and a bid by the person to whom the award is made, constitutes a complete contract, as fully as if the formal contract had been reduced to writing and signed by the parties.

*Garfield v. United States*, 93 U. S. 242.

The facts in the Garfield case are exactly the same as the facts in this case up to the time the award was made. In each case the Postmaster General advertised for proposals, received bids, and made his award to the lowest bidder. Nothing further happened in the Garfield case, except the notification to Garfield that the award had been suspended. Nevertheless, the Supreme Court held that the proposal by Garfield, and its acceptance by the Department, created a contract of the same force and effect as if a formal contract had been written out and signed by the parties. Opinion of Mr. Justice Hunt, 93 U. S., page 244.

The grounds for holding that there is a contract in this case are much stronger than in the Garfield case. In the

Garfielde case nothing was done after the award, while in this case a formal contract was sent to the bidder by the direction of the Postmaster General, with a request to sign and return it, which was promptly done. The contract was also executed by a reliable Surety Company, as surety, for performance, in the sum of \$200,000 (R. 50-51). Not only this, but the Department sent a letter of instructions for the execution of some of the work to be done under the contract, and in express terms acknowledged the contract as existing between the parties at the time (R. 51).

The principle of the Garfielde case has never been overruled. It is clearly stated in *Harvey v. United States*, 105 U. S. 671, at page 688, where the Court says: "*The written bid in connection with the advertisement and the acceptance of that bid, constitute the contract between the parties so far as regards the question whether the contract price embraced the coffer dam work.*" The Garfielde case is cited by the Court in support of the foregoing statement of law.

In *Adams v. United States*, 1 Ct. Cls. R. 192, the question arose as to whether a contract with the Navy Department was completed when the claimant's proposal was accepted by the Navy Department or when it was reduced to writing and signed.

The Court said in part: "*We think this contract was completed on the 28th day of June, 1862, when the claimant's proposal was accepted by the Navy Department.*"

In the case of *Proffit v. United States*, 42 Ct. Cls., R. 248, where it was sought to establish a contract upon the acceptance of a bid in response to an advertisement, the Court said:—

"*It is well settled that the common law rule, whereby all prior understandings are merged in the subsequent written contract, cannot be strictly applied to contracts of this character, because they are required to be made by*

*advertisement, bids and acceptances. These three steps constitute the real contract, and the written instrument is merely a reduction to form of the intention of the parties as expressed in the prior advertisement, bid, and acceptance."*

The Garfield case, 93 U. S. 242, and the Harvey case, 105 U. S. 671, are cited by the Court in support of this rule.

**Comment.** It will be seen on examination of these, as well as other decisions upon the subject, that the principal, if not the sole question involved, is whether there is "a concurrence of the minds upon a distinct proposition manifested by an overt act." If so, there was a contract, otherwise not. This case is replete with conclusive proof of each of these elements of contract. For example: The specifications furnished in connection with the advertisement for bids contain a complete description of each of the several sizes and quality of envelopes, the materials to be used, conditions for their manufacture, delivery, terms of payment, etc. These papers, prepared in full by the Department, contain every stipulation, provision and condition of the contract. The bidder was even required to make his proposal on the blank form provided by the Department. Nothing was left for the bidder but to insert in this blank form the price per thousand at which he proposed to furnish the envelopes, sign and return the proposal to the Department.

See proposals and specifications (R. 8-19).

The acceptance of the proposal was equally distinct. On April 20, 1898, Order No. 149 was issued by the Postmaster General awarding the contract to the Purcell Envelope Company as the lowest bidder (R. 49).

The foregoing furnishes conclusive evidence that the minds of the parties had met and agreed upon certain specific and distinct obligations which were to be observed by both. The existence of a contract cannot be denied.

If it were necessary, or even possible, to add to the certainty of this matter, it might be done by reference to the preparation and delivery by the Department of the formal contract in the precise terms of the proposal, with the request that claimant execute and return it and claimant's compliance with that request (Finding VI, R. 50, and Finding VIII, R. 51).

Furthermore, the parties actually entered on the performance of the contract, the Department by written instructions to claimant (Finding VII, R. 50-51), and the claimant by arranging for drawings and paper (Finding IX, R. 51-52).

## POINT II.

### The Breach of the Contract.

**Facts.** The contract was awarded April 20, 1898, performance to begin on the first day of October, 1898 (Finding IV, R. 49). On April 27, 1898, five days after claimant and its Surety had signed and returned the formal contract to the Post Office Department the Postmaster General wrote a letter directing the claimant to suspend action pending further orders (Finding IX, R. 52). On July 22, 1898, the Postmaster General made Order No. 301, declaring the contract null and void (Finding XIV, R. 53). Thereafter, on July 26, 1898, the Postmaster General made an emergency contract for the envelopes with the Plimpton Manufacturing Company (Finding XVI, R. 54, 55, 56). On October 25, 1898, the Postmaster General made a contract for the four-year term with the Plimpton Manufacturing Company (Finding XVII, R. 56, 57, 58). The Department never called on the claimant to furnish any envelopes, although it stood ready and willing at all times to furnish them (Finding XII, R. 53).

The foregoing facts are not in dispute. Do they constitute a breach?

*"Where one party to an executory contract prevents the performance of it, or puts it out of his power to perform it, the other party may regard it as terminated, and demand whatever damages he has sustained thereby."*

*Lowell v. St. Louis Mut. Life Ins. Co.*, 111 U. S. 264, 276.

The foregoing principle of law is clearly stated by Mr. Chief Justice Fuller in *Rochm v. Horst*, 178 U. S. 1, at pages 7 and 8.

See also *Howard v. Daly*, 61 N. Y. 362, and *Garfield v. United States*, 93 U. S. 242.

### **The Postmaster General Had No Power to Annul the Contract.**

The order of the Postmaster General on July 22, 1898, declaring the contract null and void, cannot be justified at law.

The Garfield case settles that principle, but it has been laid down by additional authorities on many occasions.

In *Cooke v. United States*, 91 U. S. 398, the Court says:—

*"If it (the United States) comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the laws that govern individuals there."*

See also 30 Ct. Cls., R. 352, 361.

15 Peters, 377, 392.

74 Fed. Rep. 145, 151.

The Postmaster General had no more authority to annul this contract than one individual has to revoke his contract with another. No man can revoke his contract except on terms contained in the contract itself or by mutual con-

sent. In this case there was no revocation by consent and the contract itself contained no provision that it might be annulled in the manner attempted by the Postmaster General.

### POINT III.

#### The Measure of Damages.

*"The measure of damages is the difference between the contract price and the cost of performance"* (*Roehm v. Horst*, 178 U. S. 1, at p. 28).

See also *Sneed v. United States*, 8 Wall. 77.

*Masterson v. Brooklyn*, 7 Hill, 62.

*Phila. W. & B. Co. v. Howard*, 54 U. S. 305, 344.

*United States v. Behan*, 110 U. S. 338.

*Hinckley v. Pittsburg Steel Co.*, 121 U. S. 264.

**Time of Action.** *"The law is settled that an action for breach of contract will lie at once, upon the positive refusal of performance, although the time specified for performance has not arrived."* *Donovan v. Sheridan*, 53 N. Y. St. Rep. 587.

In *Roehm v. Horst*, 178 U. S. 1, the law on this point is set forth at length and with great clearness by Mr. Chief Justice Fuller.

The facts on this point are clear. The renunciation was absolute and unequivocal (Finding XIV, R. 53).

**Reasonable Deduction.** In some cases of this character it has been held that a reasonable deduction should be made from the estimated profits of the claimant because of the release from the care, trouble, risk, and responsibility of performance. What that deduction should be is largely a matter of discretion for the Court. There is

no precedent in point. In this particular case the Court of Claims has made no specific deduction on this account, though the point has been strongly urged by counsel for the United States at both trials.

Doubtless the Court has made allowance for this feature of the case in its calculation of the damages or it has concluded that the years of litigation, with their incalculable labor, expense, anxiety, and care to which the claimant has been forced, more than offset the trouble which would have attended performance of the contract.

It seems pertinent to state here that the claimant or Appellee, by its bid in 1898, and the upset of the little ring of collusive bidders, who had hitherto controlled the Government envelope business, was the direct cause of a saving to the Government during the four-year period, 1898 to 1902, of \$1,400,000 (Finding XVII, R. 58). If the saving since has been at the same rate it now amounts to \$5,600,000 additional.

Notwithstanding this, we have been forced through nearly seventeen years of litigation involving a suit in equity to prevent the breach of the contract, two complete trials in the Court of Claims, with innumerable intermediate motions, and hearings and finally an appeal to the Supreme Court. When the foregoing is considered and the further fact that simple interest, for the period of litigation, on the \$185,000 awarded at both trials by the Court of Claims, would be \$177,600, it seems reasonable to expect that a court will make no deduction from proven damages by reason of any release from the care of performance.

**Amount of Damages.** The Court of Claims has, on two occasions after two complete trials and the most exhaustive presentation of testimony, and argument, awarded the Appellee the sum of \$185,331.76, and judgment has been entered accordingly (R. 43 and R. 66).



### APPELLANT'S BRIEF.

A copy of the Appellant's brief has been furnished counsel for Appellee two days before it is necessary for counsel to take the train for Washington. One of the two intervening days is Sunday. It will therefore be impossible to make any extended reply and have the same in printed form in season for the argument. The copy furnished to counsel is in typewritten form and it will therefore be impossible to make any reference to the printed pages.

### The Contract.

The Appellant's contention that there was no contract between the Purcell Company and the United States requires little consideration. The main points are:—

1. That the Postmaster General failed to sign the written contract;
2. That he failed to approve the surety;
3. That his attempted annulment was valid.

The Garfield case settles the first point beyond all question. The formal award of the Post Office Department, in response to the Purcell Company's bid, created a contract if there had been nothing more. In addition to this, however, we have the documentary evidence already referred to in this brief (page 3) which establishes clearly that the minds of the contracting parties met on a distinct proposition in all its details. The advertisement, the specifications, the contract prepared by the Post Office Department, and sent to the Purcell Company, with instructions to execute it, contain the most minute provisions for every possibility which might arise in the performance of the contract. Nothing was left to the option of the Purcell Company. The Post Office said in effect:—"We have awarded you a contract.

We are sending you the written document. Sign it and return to us."

The second point is well answered in the opinion of the Court of Claims. The Surety Company which signed the contract as surety in the sum of \$200,000 was of unquestioned financial responsibility. The Postmaster General knew it at that time, as counsel for the Government knows it now. To have repudiated the contract on that ground would have subjected the Postmaster General to instant criticism and such a course could not have been defended. Of course he was satisfied with the responsibility of such a company as any other individual or official would have to be. Furthermore, if he were dissatisfied, his remedy, as provided in the specifications (R. 18) and in the Contract (R. 28), was to give the contractor ten days' notice to provide new or additional sureties. He had no right, by the terms of the contract, by the rules of law, or ordinary decency, to annul the contract for insufficient surety without giving the contractor opportunity to furnish additional surety. The fact that the Postmaster General never mentioned the sufficiency of the surety in any manner or at any time is sufficient ground to assume that the question never entered his mind, and it certainly gives the Purcell Company the right to assume that his silence signified his satisfaction.

The third point has received considerable space in the Appellant's brief. Great emphasis is laid on the fact that Postmaster General Smith, who broke the contract, had unfavorable reports on the contractor's financial responsibility. That fact would be less surprising if counsel stated, what is a fact, that the unfavorable reports came exclusively from disappointed competitors at the first bidding. It is certainly of equal importance that the predecessor of Postmaster General Smith, who awarded the contract to the Purcell Company, also instituted an investigation of its responsibility and received a favorable report thereon. It was proper that the Postmaster General, prior to the

award, should investigate the bidders. He had a right, as provided in the Specifications (R. 18), to reject any and all bids; but having made his investigations and ordered the award, he obligated his principal, the United States, and neither he nor his successor could ever evade that obligation except by the mutual assent of both parties to the contract or in accordance with the terms of the contract itself. That being so, it makes no difference whether Postmaster General Smith acted in good faith or bad. It makes no difference that his report was favorable or unfavorable. The contract was made. The only opportunity the Government had to break it was when the Purcell Company failed in its performance.

### Damages.

#### *Alleged Necessity of Additional Findings.*

The record on appeal contains a list of requests for additional findings of fact, pages 67 to 76, which were denied by the Court of Claims on December 18, 1916. These same requests were made the basis of a recent motion to the Supreme Court, which was also denied, asking again that the case be remanded to the Court of Claims. Counsel for the United States now returns to this point of attack in his brief.

**Authorities.** "By our (the Supreme Court) rules in reference to appeals from the Court of Claims, rule 1, sect. 2, that Court sends here its finding of facts as 'established by the evidence, in the nature of a special verdict.' The evidence is not sent up. This finding is conclusive unless impeached for some error in law appearing in the record."

*United States v. Smith*, 94 U. S. 214, at page 218.

The opinion in the Smith case just cited is continued on page 219, as follows:—

*"All these were legitimate subjects of inquiry by the Court in making up its final estimate; but we know of no rule of law or practice which requires a court or jury to specify the elements of the calculation by which it arrives at its final result."*

*"The result of the best judgment of the triers is all that the parties have any right to expect."* U. S. v. Smith, 94 U. S. 219. See also McClure v. United States, 116 U. S. 145. U. P. Ry. Co. v. United States, 116 U. S. 154.

**Application.** The foregoing principles are readily applied to the present case. The facts have been found by the Court of Claims, after consideration of all the testimony and exhaustive written and oral arguments at two different trials. These additional requests contain nothing which has not been discussed over and over again. The subject matter, so far as material, has been considered and findings made thereon. The Court of Claims therefore, very properly, refused any further attention to the same old questions, even though put in a new form and with a new set of Roman designations.

**Analysis of Requests.** The particular findings here requested relate to mere incidental facts which amount only to evidence. The most casual reading of the requests substantiates the foregoing statement. For example, the following brief quotations are made:—

Request I, R. 67. *"Whether or not . . . Purcell made a statement with regard to the financial condition of the stockholders of the Purcell Co.?"*

Request IV, R. 68. *"Whether or not . . . information was transmitted to the Postmaster General . . ."*

*that a mortgage on the Purcell plant was held by L. J. Powers?"*

Request VII, R. 70. *"Whether or not in a letter of Senator Platt it was stated, 'I hope you will not sign the contract,' etc.?"*

Some of the requests are so totally immaterial that they are absurd. For example,—

Request XV, R. 72. *"Whether or not the Norman Paper Co. combined with the American Writing Paper Co. in 1899 and 1900?"*

Other requests amount to nothing more than an attempt to cross-examine the Court on the reasoning by which it reached its conclusions. For example:—

Request XXIII, R. 74. *"Whether or not any correspondence or contract was ever entered into between Purcell Co. and Wickham?"*

*"Whether or not the price was agreed upon?"*

*"Whether or not the promise mentioned in Finding XI was to be performed within one year from the making thereof, etc.?"*

*"Whether or not the Court included in the cost incident to the execution of the contract anything on account of the purchase of Wickham machines?"*

Request XXV, R. 75. *"Whether or not the sum of all the various issues, etc., which was to be the basis in round numbers for which the contract was awarded, was 600,658; 000 and if not, what number did furnish the basis of the contract?"*

Request XXVIII, R. 76. *"Whether or not the Court has included in Finding XX . . . the cost of gum, ink, dies, matrices, etc., and if so, the amount of said items respectively?"*

The particular requests above quoted are typical of all the others. As a whole they seek nothing but to review the evidence and cross-examine the Court. They are immaterial, irrelevant, and impertinent.

The Court of Claims has considered all the evidence and all the requests. It has made findings in accordance with its best judgment. In the language of the Court in *United States v. Smith*, 94 U. S. 219, "*The result of the best judgment of the triers is all that the parties have any right to expect.*"

The foregoing is sufficient general answer to the claim that additional findings are proper and necessary. It is perhaps well to refer in particular to those points on which the appellant lays greatest stress.

1. The point is raised in Requested Finding XXV, R. 75, and argued in Appellant's brief, that the Court of Claims erred in estimating damages on the basis of the number of issues actually called for by the Post Office Department during the four years for which this contract was to run, instead of using the figure set forth in the Department's advertisement as the basis upon which bids would be computed. The answer to this contention is obvious. Bids were solicited for fourteen different kinds of envelopes. Bidders might vary greatly in their estimates as to the price which should be made for any one or all of the fourteen different kinds. The only way in which the Government could determine the lowest bidder was to use a specific figure in the computation, and with this basic figure compute, with the aid of the bidder's detailed prices, the total amount of his bid. The natural figure on which to base the estimate was the total number of issues called for in the previous four-year term. That happened to be, in round numbers, 600,000,000, and that figure was used. Except for the purpose of calculating the relative size of the original bids this figure had no significance. The speci-

fications distinctly provided that "*any proposal made under the advertisement and the specifications, shall impose the obligation to furnish, at the prices bid; all the envelopes and wrappers that may be ordered by the Department during the contract term without regard to the quantities above given*" (R. 17). Here was a clear obligation upon the bidder to furnish all the envelopes that the Government might ask for during the term of the contract. It is equally clear that the Government was obliged to give this contractor the opportunity to make all the envelopes it needed, provided, of course, its performance was up to requirements. Therefore, the Court of Claims very properly determined the total number of envelopes called for during the term of contract and estimated the total price which the contractor would have received on this basis (R. 58).

A portion of the envelopes furnished during the term of this contract was furnished under a so-called emergency contract with the Plimpton Manufacturing Company. The Court could very properly consider, in figuring claimant's profits, these envelopes furnished under the so-called emergency contract, as well as envelopes furnished under the later contract for the balance of the term, for the reason that all of the envelopes under either the emergency or the regular contract were required by the Government during the term '98-'02, for which the Purcell Company had the right to manufacture the Government requirements.

2. Appellant asks that the Court of Claims make a finding as to the cost of the Wickham machines, and then deduct that amount from claimant's damages. This specific finding is unnecessary, and any such deduction would be grossly improper. If the claimant had purchased Wickham machines for the performance of the contract, the purchase price would obviously have been a capital investment, and could not, by any system

of reasoning, be charged as a whole against the performance of this four-year contract. It would be just as fair to charge against the performance of this contract the cost of claimant's \$200,000 brick building. The most that could be considered in this respect is a fair overhead or carrying charge, incident to the purchase or rental of these machines. That the Court has undoubtedly done. Finding XX, R. 59, sets forth in a single item the sum total of the cost of performance; but in estimating that sum every conceivable item of expense was figured. This statement may be verified by reference to the testimony and to the findings of the Court of Claims at the first trial. That amount must stand as the final conclusion of the Trial Court and is not subject to review.

3. The question of deduction on account of contractor's release from responsibility of performance is already treated in this brief on pages 9 and 10.

#### SUMMARY.

The Appellee had an express and valid contract with the United States. That contract was unlawfully broken by the United States. The Appellee has proved damages to the amount of \$185,331.76, and judgment therefor has been entered by the Court of Claims in favor of the Appellee.

It is respectfully submitted that this judgment should be affirmed.

ARTHUR BLACK,  
*Attorney for the Appellee.*

STANTON C. PEELLE,  
C. F. R. OGILBY,  
*Of Counsel.*



Office Supreme Court, U. S.  
FILED

MAR 7 1919

JAMES D. MAHER,  
CLERK.

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No. 168

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1918

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THE UNITED STATES, APPELLANT

*v.*

THE PURCELL ENVELOPE COMPANY  
APPELLEE

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APPEAL FROM THE COURT OF CLAIMS

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APPELLEE'S ANSWER TO SUPPLEMENTAL BRIEF  
FOR THE UNITED STATES

---

ARTHUR BLACK  
*Attorney for Appellee*

STANTON C. PEELE  
C. F. R. OGILBY  
*Of Counsel*

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# Supreme Court of the United States

OCTOBER TERM, 1918.

No. 168.

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THE UNITED STATES, *Appellant*

*v.*

THE PURCELL ENVELOPE COMPANY, *Appellee*.

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APPEAL FROM THE COURT OF CLAIMS.

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## APPELLEE'S ANSWER TO SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

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A new counsel for the United States has filed a "Supplemental Brief" in which he devotes sixteen pages to argument in support of the claim that the Post Office Department, if it made any contract at all with the Purcell Company, was never obligated to take more than fifteen days' supply of envelopes and that as a consequence the Purcell Company is now limited in recovery to its expense in preparing for the contract plus its profit, if any, on fifteen days' supply of envelopes.

This contention is original but it has no other merit. It cannot be supported by any reasonable or fair interpretation of the advertisement, the bid, the award, the written

contract or the correspondence relating thereto. On the contrary the language of John A. Merritt, Third Assistant Postmaster General, in his letters of April 20th and April 21st shown in Findings V and VI, R. 50, indicate clearly the point of view of the Post Office Department. In each letter he refers to "*the contract for furnishing this Department with stamped envelopes during the four years beginning on the first of October next.*"

It is enough to say that in the seventeen years of litigation over this claim this contention has never before been raised by any member of the Post Office Department which prepared the advertisement, award, and contract, nor by any one of the numerous and vigilant counsel heretofore employed by the United States in its defence.

The Post Office Department asked for bids on a four-year contract. The successful bidder was to be given the exclusive right to furnish all the government requirements for the four year period, so long as he complied with the terms of the contract. Common sense forbids any other view. If a new bidder could never make the government take more than fifteen days' supply no new bids could be obtained and the government would be absolutely at the mercy of the old contractor. The government of course is the only user of stamped envelopes. To manufacture them requires special facilities, machinery and other conditions, as is clearly shown by the detailed requirements in the contract R. 21-29. The paper from which the envelopes are made is of a special formula and could not be economically purchased except in large quantities and for a definite period. The volume required by the government is tremendous. No one would equip himself with the factory, machinery and materials to meet the government demands without a definite contract for a long term. Such a contract was made with the Purcell Company. The interpre-

tation placed upon it by the latest counsel for the United States is indefensible.

Respectfully submitted,

ARTHUR BLACK,  
*Attorney for Appellee.*

STANTON C. PEELLE,  
C. F. R. OGILBY,  
*Of Counsel.*

Argument for the United States.

UNITED STATES *v.* PURCELL ENVELOPE  
COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

No. 168. Argued March 10, 1919.—Decided March 31, 1919.

In answer to an advertisement under Rev. Stats., § 3709, claimant made the lowest bid for furnishing envelopes and wrappers to the Post Office Department, which was duly accepted. *Held*, that a contract was completed with the same force and effect as if a formal writing had been executed, and bond approved, by the Department, and that the Postmaster General or his successor had no discretion to revoke it. P. 317.

Charges embodied in requests for findings that such a contract was procured by one without financial standing, by imposing on the Postmaster General, *held* concluded by the judgment of the Court of Claims, sustaining the contract. P. 320.

Upon the Government's repudiation of such a contract before the time for performance has arrived, the measure of claimant's damages is the difference between the contract price and what would have been the cost of performance. *Id.*

This court will assume that evidence touching the amount of damages, including the expense necessary to make the contractor ready (as it was found to be) for performance of its contract, was duly considered by the Court of Claims. P. 321.

A contract to furnish and deliver promptly in quantities as ordered the envelopes and newspaper wrappers that the contractor may be called upon by the Post Office Department to furnish during four years, *construed* as entitling the contractor to supply all needed by the Department in that period. P. 322.

Motion to remand to the Court of Claims, for additional findings, denied. P. 323.

51 Ct. Clms. 211, affirmed.

THE case is stated in the opinion.

*Mr. Assistant Attorney General Fricson*, with whom

*Mr. Huston Thompson* and *Mr. J. Robt. Anderson* were on the briefs, for the United States:

The proposal by its terms contemplated only an agreement to enter into a contract. The contract itself, which was never executed on behalf of the Government, contained material matter not found in the proposal and acceptance, and was drawn to be executed by the Postmaster General, or, with his authority, by his Third Assistant, as required by law (19 Stat. 319, 355); and the bond required to be approved. Thus the case is clearly one of those where the agreement at most was upon the preliminaries to a contract which was never made. *Steamship Co. v. Swift*, 86 Maine, 248, 259, 261; *Ambler v. Whipple*, 20 Wall. 546, 556; *Commercial Telegram Co. v. Smith*, 47 Hun, 494, 501, 502. All contracts of a similar nature, since 1882, had been signed by the Postmaster General. In *Garfield v. United States*, 93 U. S. 242, the acceptance made the contract because under the law relating to the class of contracts there involved (to carry the mail) all the conditions were statutory, and these having been complied with, the action of the Postmaster General was merely ministerial.

The contract was for the supply of such envelopes and wrappers as the Department might call for. Nowhere is there expressed any obligation of the United States to order in any particular quantity. The obligation is simply to pay for the articles accepted and delivered under the contract, at the rates specified, with the additional obligation to accept and pay for stock on hand at the expiration of the term, not exceeding the Department's average requirements for fifteen days. *Merriam v. United States*, 107 U. S. 437, 439, 444; *Lobenstein v. United States*, 91 U. S. 324, 325.

*Mr. Arthur Black*, with whom *Mr. Stanton C. Peelle* and *Mr. C. F. R. Ogilby* were on the briefs, for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Action brought by appellee, the Purcell Envelope Company, which we shall designate as the Envelope Company, against the United States for damages for breach of an express contract. The Court of Claims rendered judgment for the Envelope Company for the sum of \$185,331.76. The United States appeals.

The findings of the court are quite voluminous, but it is only necessary to quote from them to the following effect: The Post Office Department, through the Postmaster General, James A. Gary, invited by advertisement bids "for furnishing stamped envelopes and newspaper wrappers in such quantities as may be called for by the department during a period of four years, beginning on the first day of October, 1898." In pursuance of the invitation the Envelope Company submitted a bid in the manner and time specified in the advertisements of the Department.

The bid of the Envelope Company was accepted, and the following order entered: ". . . 2nd. That the contract for furnishing the envelopes called for by the advertisement and specifications referred to be awarded to the Purcell Envelope Co., of Holyoke, Mass., as the lowest bidder for the Government standard of paper, at the following prices a thousand, namely: . . ." The Department, before issuing the order, investigated the financial responsibility of the Envelope Company and considered it satisfactory.

April 21, 1898, the Department sent to the Envelope Company a "contract in quadruplicate," to be executed "at once" and returned to the Department. It was promptly returned as requested, signed by the president of the Envelope Company, with the Fidelity & Deposit Company of Maryland as surety in the sum of \$200,000.



April 27, 1898, the Department, by the Third Assistant Postmaster General, wrote to the Envelope Company as follows: "Your telegram of to-day is before me. As the Postmaster General has not yet signed the contract awarded by the Department to your company for furnishing stamped envelopes during the coming four years, but is holding the matter in abeyance, I have to request that you suspend all action under my letter of the 21st instant until further orders." The Envelope Company had, however, already made arrangements and contracts for the supplying to it of the necessary materials to fulfill the terms of the contract and was ready and willing at all times to fully perform it according to its terms. But neither the Postmaster General, nor any department or officer of the Government made any call or request upon the Envelope Company to furnish or deliver the envelopes or wrappers which were the subject-matter of the contract and the company's plant was kept intact ready for the performance of the contract, remaining idle.

July 22, 1898, the Department, through Postmaster General Smith, the immediate successor of Postmaster General Gary, the latter having gone out of office, revoked and canceled the contract and declared it to be null and void. Prior to doing so the Postmaster General instituted an investigation through one of his proper officers into the business and financial standing of the Envelope Company and the report thereunder was unfavorable to the company.

On or about July 22, 1898, the Envelope Company, having received information that the Postmaster General designed readvertising for proposals, sought by a bill filed in the Supreme Court of the District of Columbia to enjoin his action. The bill was dismissed August 15, 1898. The court, however, was of opinion that a contract had been executed but that the Envelope Company had an efficient remedy at law.

An offer was subsequently made by two other companies to supply the Post Office Department, upon an emergency contract, stamped envelopes and wrappers of the kinds and qualities the Government should need. The Department declared that an emergency existed under § 3709, Rev. Stats., accepted the offer and entered into a contract in accordance therewith.

The total cost to the Envelope Company for materials and the manufacture and delivery of the envelopes and wrappers in accordance with the terms of its contract would have been \$2,275,224.46. Deducting that sum from the contract price leaves a difference of \$185,331.76, which represents the profit the company would have made if it had been allowed to perform its contract. For that sum judgment was entered.

It will be observed from the recitation of the above facts that the case presents the propositions—First, was there a completed contract between the Envelope Company and the United States through its Postmaster General, and, second, if there was such contract, what is the measure of damages?

For an affirmative answer to the first proposition the Envelope Company relies on *Garfield v. United States*, 93 U. S. 242, and on that case the Court of Claims rested its decision and considered that the case was supported by other cases which were cited.

The case may be considered as the anticipation of this—its prototype. It passed upon a transaction of the Post Office Department and decided that a proposal in accordance with an advertisement by that department and the acceptance by it of the proposal “created a contract of the same force and effect as if a formal contract had been written out and signed by the parties.” And for this, it was said, many authorities were cited but it was considered so sound as to make unnecessary review of or comment upon them.

In resistance to the case as conclusive the Government urges the qualification that "the court did not say, or assume to say, that the acceptance of the proposal in *all* [italics counsel's] cases constituted a contract, but held that it did in the present [that] case," and that "there was a reason for the conclusion . . . which does not obtain in the case at bar." We cannot agree, and in answer to the first qualification it is only necessary to say that the court expressed a principle, not, of course, applicable to all cases, but applicable to like cases; and the present is a like case, identical in all that makes the principle applicable. And in so determining we answer the other objection of the Government that there were features in the law in the *Garfield Case* which do not obtain in the pending case, which constituted, if we understand counsel, the determination of the law against the act of the Postmaster General, his duty being merely ministerial. In the present case it is insisted his action is not so subordinate, that he has discretion, and when exercised it is paramount, his action being "quasi judicial," the contract not having been consummated, and that, therefore, it was within his power to review and set aside the decision of his predecessor. We are unable to concede the fact or the power asserted to be dependent upon it. There must be a point of time at which discretion is exhausted. The procedure for the advertising for bids for supplies or services to the Government would else be a mockery—a procedure, we may say, that is not permissive but required (§ 3709, Rev. Stats.). By it the Government is given the benefit of the competition of the market and each bidder is given the chance for a bargain. It is a provision, therefore, in the interest of both Government and bidder, necessarily giving rights to both and placing obligations on both. And it is not out of place to say that the Government should be animated by a justice as anxious to consider the rights of the bidder as to insist upon its own.

And, we repeat, there must be some point at which discretion ceases and obligation takes its place. That point is defined in the *Garfield Case*, and that the definition is applicable to the case at bar is illustrated by the findings of the Court of Claims. Upon the invitation, in accordance with law, of Postmaster General Gary, the Envelope Company and eleven others submitted bids. The Envelope Company was the lowest bidder and after the Company had been found upon investigation to be financially responsible its bid was accepted by entry of a formal order. The Company was then directed by the Department to execute the necessary contract in quadruplicate, which it did, and returned the contract to the Department with a surety whose responsibility was not questioned at any time nor was other security demanded, as it might have been. Postmaster General Gary went out of office, and his successor, either by inducement or upon his own resolution, revoked the contract and entered into a contract with other companies.

The record furnishes no justification of such action. There is no charge of default against the Envelope Company, no charge of inability to perform its contract, except in a particular which we shall hereafter mention. There is, it is true, a finding that Postmaster General Smith caused an investigation to be made of the financial standing of the Envelope Company and that the report thereunder was unfavorable to it. This is made a great deal of, and the fact that the contract was not signed nor the bond of the Envelope Company approved.

It makes no difference that the contract was not formally signed or the bond formally approved, as counsel for the Government contends they should have been, both by the terms of the contract and by a statute of the United States (28 Stat. 279). Their formal execution, as we have seen, was not essential to the consummation of the contract. That was accomplished, as was decided in the

*Garfield Case*, by the acceptance of the bid of the Envelope Company and the entry of the order awarding the contract to it. Therefore, we do not follow with minute attention the argument of the Government in asserting the power of Postmaster General Smith to review and annul his predecessor's decision and that directed against the financial standing of the Envelope Company or the deception the Government asserts was practiced on Postmaster General Gary, which are made the subject of a request for findings. We may assume that the Court of Claims considered such charges and all other elements before concluding that the Envelope Company was entitled to recover. And we pass to the question of damages.

The Court of Claims decided that the measure of damages was the difference between the cost to the Envelope Company of materials and the manufacture and delivery of the envelopes and wrappers in accordance with the terms of its contract and what it would have made if it had been allowed to perform the contract. For this the court cited and relied upon *Roehm v. Horst*, 178 U. S. 1. It is there decided that the positive refusal to perform a contract is a breach of it, though the time for performance has not arrived, and that liability for the breach at once occurs. And it is further decided that the measure of damages is the difference between the contract price and the cost of performance. The case was replete in its review of prior cases. We may refer, however, to *United States v. Speed*, 8 Wall. 77, 85; *United States v. Behan*, 110 U. S. 338; *Hinckley v. Pittsburgh Steel Co.*, 121 U. S. 264.

The Government does not attack the ruling but contends that it was not properly applied by the Court of Claims. The contention is rested on the following finding: "Claimant, contemplating making the envelopes under its said contract on the Wickham envelope machines, entered into negotiations with Horace J. Wickham whereby he prom-

ised to furnish claimant with a sufficient number of said machines on which to perform said (envelope) contract, and to have some of them ready before the beginning of the contract term, October 1, 1898."

The Government says of the Wickham machine that it made the envelope in one operation and that there is nothing to show that the Court of Claims, "as an incident to the cost of performance of the contract, considered the cost of the Wickham machines to appellee, although evidence of the same was submitted to it." And further, "if the court did find this item, and did consider it in arriving at the judgment, appellant is entitled to know this." Again, the Government contends that "so far as the findings are concerned it does not appear that the court allowed a reasonable deduction from the amount of the judgment by reason of appellee's release from care, trouble, risk, and responsibility attending the performance of the contract."

To the contentions there may be offset the decision of the Court of Claims. The court in its opinion expressly declares that the findings showed that the Envelope Company had fulfilled all the requirements of the Postmaster General and was ready and willing to furnish the envelopes and wrappers and recognized, we may assume, as grounds to be considered the elements the Government urges, so far as the court deemed them relevant or as having any probative strength, and its appreciation of them was obtained after protracted litigation involving two complete trials. We are not, therefore, disposed, on assertions so elusive or disputable of estimation as those of the Government, to reverse or modify the judgment.

There are other contentions of the Government which we may pass without comment except one which it submits upon a supplemental brief. It is addressed to the rule of damages adopted by the Court of Claims and urges that it was erroneous, based on the theory, as it is as-

serted, that the Envelope Company "had a contract which entitled it to furnish all the stamped envelopes and wrappers, of the sizes mentioned in the specification, which the Post Office Department *should need* [italics counsel's] during the four years' contract." This is denied, and it is said, quoting the contract, that the Envelope Company was only to "furnish and deliver promptly and in quantities as ordered," the envelopes and wrappers "that it may be called upon by the Post Office Department to furnish during the four years." It is difficult to treat the contention seriously. There is something surprising in the declaration that a contract to supply a great department of the Government with envelopes and newspaper wrappers which it might need for a period of four years at a cost of nearly two and one-half million dollars bore but scant obligation upon the part of the Government, or, to be precise and in the language of counsel, that the Envelope Company "could not have forced the giving of orders [by the Government] in excess of fifteen days' supply," and that this was the extent of the Government's obligation. And the further contention is, that the obligation being thus limited the damages the Envelope Company was entitled to were, at most, "the expenses, incurred in getting ready to perform the contract, and the profits it would have derived from the manufacture and sale" of such fifteen days' supply—that all else was expectation and cannot be capitalized by the Envelope Company and made the basis of profits and the responsibility of the Government. If the contention be more than dialectical we may express wonder that it was not given prominence in the Court of Claims and that in this court it was reserved for the afterthought of a supplemental brief. The further answer may be made that the contract of the Envelope Company was not so dependent as urged, and that its expectation was substantial is evidenced by the haste of the Department, after the revocation of the contract

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Syllabus.

with the Company, to declare an emergency in its need and enter into a contract with other companies.

On January 13th the Government made a motion to remand the case to the Court of Claims for additional findings. It was denied, but the right reserved to make such order if we should be so advised. Our attention is directed to the motion, which it is submitted should be considered on the merits. Again considering the motion and the case as it has been developed by argument of counsel, we think the motion should not be granted. The judgment of the Court of Claims is

*Affirmed.*

MR. JUSTICE McREYNOLDS took no part in the consideration and decision of this case.